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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1978

Nos. 78-329, 78-330

FRANCIS X. BELLOTTI, ATTORNEY GENERAL OF THE
COMMONWEALTH OF MASSACHUSETTS, ET AL.,

APPELLANTS IN No. 78-329,

AND

JANE HUNERWADEL,

APPELLANT IN No. 78-330

v.

WILLIAM BAIRD ET AL.,

APPELLEES IN Nos. 78-329, 78-330

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Volume II
Transcripts and Depositions

Appeals Docketed August 25, 1978

Jurisdiction Noted October 30, 1978

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United States District Court District of Massachusetts.

WILLIAM BAIRD; MARY MOE I;
GERALD ZUPNICK, M.D.; PARENTS
AID SOCIETY, INC.; and all
others similarly situated,
PLAINTIFFS,

v.

FRANCIS X. BELLOTTI, Attorney General
of the Commonwealth of Massachusetts;
GARRETT BYRNE, District Attorney of the
County of Suffolk; their agents, successors,
those acting in concert with them, and all
others similarly situated,
DEFENDANTS,

CIVIL ACTION
No. 74-4992-F

JANE HUNERWADEL, individually and
on behalf of all others similarly situated
and, further, as next friend of her minor
daughters who are of childbearing age and
are or may become pregnant, and all others
similarly situated,
DEFENDANT-INTERVENOR.

Transcript of Testimony.

DECEMBER 7, 1974.

*
[13] MR. LUCAS: We are prepared to call our first expert witness.

JUDGE ALDRICH: Go ahead.

MR. LUCAS: Dr. Somers Sturgis.

SOMERS H. STURGIS, Sworn
Direct Examination by Mr. Lucas

Q. Would you state your name and address, please, sir?

A Somers H. Sturgis, 47 Raymond Street, Cambridge, Mass.

Q What is your current position?

A At present I am emeritus professor at Harvard in gynecology and I am a consultant in gynecology to a local university health service.

Q Are you licensed to practice medicine in the Commonwealth of Massachusetts?

A Yes.

Q I would like to show you your curriculum vitae and ask you to identify it.

MR. LUCAS: Let me first show it to the defendants.

JUDGE ALDRICH: Doctor, this is a large courtroom. Quite apart from the persons in the back [14] of the courtroom who may not be able to hear you, we cannot hear you.

Mr. Lucas, we have the same problem with you and even more so because the doctor has a microphone and you don't.

MR. LUCAS: I ask the Clerk to mark this Exhibit 1.

(Curriculum vitae of Dr. Somers H. Sturgis marked Plaintiffs' Exhibit 1 for Identification.)

Q Would you tell the Court what Exhibit 1 is, Dr. Sturgis?

A This is my curriculum vitae giving my appointments, my background and experience and my professional qualifications, together with the societies, medical and other, that I belong to, and a list of some 145 publications that are in the medical literature.

Q Have you specialized in any particular field during your career?

A Since the war I have been in gynecology, having been trained originally as a surgeon, general surgeon, and after the war I concentrated in gynecology entirely for the last 30 years, since 1945.

JUDGE FREEDMAN: May I ask you, Doctor, which war you are referring to, since we have had [15] nothing but wars of late?

THE WITNESS: The Second World War.

Q Are you a member of any national gynecological organizations?

A I am a member of a good many national as well as local organizations. I am a diplomate of the American Board of Obstetrics and Gynecology, as well as surgery, and a member of the American Gynecological Society, as well as surgical societies but most of them gynecological and obstetrical.

Q Would you describe the extent of your clinical experience in gynecology over the years?

A I have been in practice for — well, it comes to 19 years since I got back from World War II, and in that time I have been rather more interested in the emotional side of gynecology, particularly in young people, in adolescents. In 1950 I was asked by Dr. Roswell Gallagher to be the gynecological consultant to the first Adolescent Clinic in this country. Dr. Gallagher set up this first clinic devoted entirely to adolescents at the Children's Hospital, the Children's Medical Center now, in 1950, and from that time on I have been gynecological consultant to this adolescent group — this has been not only in my private practice but with the [16] Children's Medical Center, as well as the fact that I am now consultant to a college age group, that is from 16 or 17 to 19 or 20, locally, a college group at a neighboring university.

Q Are you familiar with the prevailing national and local standards of acceptable medical practice in the gynecology field?

A I certainly am, having been a member of many national societies, and of course receiving the bulletins from the College of Obstetrics and Gynecology, as well as other journals devoted to this specialty.

Q Have you been involved in the promulgation of any of these standards by the national society, the American College of Obstetricians and Gynecologists?

A Yes. I was a member of a committee of the American College of Obstetricians and Gynecologists back in 1968. This was a subcommittee for the Committee on Life, Education and Behavior of the College. This numbered nurses, doctors and social workers. It was a behavioral group. This subcommittee was asked to bring recommendations to the College concerning certain sexual problems, particularly in young people.

Q There are two statements in one report. I would [17] like to ask you to identify them.

MR. LUCAS: First, I will show them to counsel for the defendants. I would like to have this marked as Exhibit 2 and this one as Exhibit 3, and this statement marked Exhibit 4.

(Statement of American College of Obstetrics and Gynecology, dated February 10, 1973, and amended June, 1974, marked Plaintiffs' Exhibit 2 for Identification.)

(Statement of American College of Obstetrics and Gynecology, dated April 10, 1973, marked Plaintiffs' Exhibit 3 for Identification.)

(Statement submitted to Executive Board of the American College of Obstetrics and Gynecology re Sexual Crises in the Minor Girl marked Plaintiffs' Exhibit 4 for Identification.)

Q Dr. Sturgis, could you identify for the Court these exhibits?

JUDGE ALDRICH: Do you have objection?

MR. BEHAR: I would like the record to show we are not acquiescing in the introduction of these as exhibits. They are marked for identification, as I understand it, and have not been incorporated as exhibits.

JUDGE ALDRICH: It will be understood they are all marked for identification at this time except No. 1.

[18] Q Would you identify them as 2 through 4, please?

A Exhibit 2 is a statement by the American College of Obstetrics and Gynecology. This is dated February 10, 1973, and was amended June, 1974. This is a statement of policy.

Exhibit 3 is again a statement by the American College of Obstetrics and Gynecology on the unmarried mother. This is again a policy statement. It has a date of April 10, 1970.

The fourth exhibit, No. 4, is a statement submitted to the Executive Board of the American College of Obstetrics and Gynecology by the subcommittee that I mentioned, of which I was a member, concerning sexual crises in the minor girl, in which our committee took up venereal disease in the minor girl, how it is to be handled by the profession or suggesting how it be handled, plus abortion, plus emotional crises of a sexual nature. Those three issues were taken up by this committee in Exhibit 4.

Q Was Exhibit 2 approved by the entire American College of Obstetrics and Gynecology?

A Yes. Exhibit 2 is a College statement on abortion.

Q Is Exhibit 3 also a College statement?

A That is correct.

Q And what branch of ACOG approved Exhibit 4, the [19] entire College or the committee?

A The College published our statement, Exhibit 4, in the monthly bulletin, although it had not been at that time accepted by the Executive Committee of the College as a policy.

Q Is there anything in Exhibit 2, Statement on Abortion, which mandates parental consent for minors under age 18?

A There is nothing at all in there on that score.

Q Is there any recommendation or provision in Exhibit 3 which mandates parental consent for minors under 18?

A No, sir, there is not.

Q Is there any recommendation which mandates parental consent in Exhibit 4?

A This is something that is taken up in Exhibit 4, in three pages, and that is very much my concern, and I would like to, if I may, answer that in this way. We recognize that an unwanted pregnancy —

MR. REYNOLDS: Objection. He has answered the question.

JUDGE ALDRICH: I can't hear you.

MR. REYNOLDS: He has already answered the question that was asked him.

JUDGE ALDRICH: Would you identify [20] yourself?

MR. REYNOLDS: Robert J. Reynolds.

JUDGE ALDRICH: And you appear for whom?

MR. REYNOLDS: The intervenors, sir.

JUDGE ALDRICH: You haven't been allowed to intervene.

MR. REYNOLDS: I beg the Court's pardon.

MR. BEHAR: Your Honor, may I request clarification?

JUDGE ALDRICH: Excuse me. You have been allowed to intervene.

MR. REYNOLDS: I thought I was.

JUDGE ALDRICH: The motion to exclude you has not been allowed. I beg your pardon. You may proceed.

MR. REYNOLDS: May I have a ruling on my objection, if your Honor please.

JUDGE FREEDMAN: What is the basis for your objection?

MR. REYNOLDS: That he has already answered the question that was asked him.

He said he would like to tell more about this.

JUDGE ALDRICH: All right. Ask him if he would like to tell more about it.

[21] Q Would you describe the contents and findings in Exhibit 4?

A Yes, sir. I would like to say that we considered in the committee the fact that an unwanted pregnancy is sometimes a social and emotional tragedy to an adult and that when the mother herself is a child it is even worse. The adult, now woman, has received the privilege of the option of terminating pregnancy, yet the minor, the child, is in a much more serious predicament.

We faced this from the point of view of the surgeon or gynecologist when a minor child comes to him for termination of pregnancy but refuses to let her parents know, and this is an extremely serious dilemma for the medical profession, and we felt that there were only three possible answers that he could give.

One would be to refuse this child, not to do anything at all, and to send her along. Another would be to tell her parents in spite of the fact she says she would not allow this. And the third would be to try to give her whatever medical resolution of the problem might be right.

We felt that the first situation was perhaps the worst — to send this child away without [22] any help at all, in which case certainly if she had gone to an illegal abortionist and had severe complications or even death the doctor who sent her away might indeed find himself responsible for that. We felt —

MR. REYNOLDS: May I enter an objection, if your Honor please. The witness was simply asked to identify this document at this time.

JUDGE ALDRICH: Well, in this instance he is talking about Exhibit 4 which is, as I understood it, a report from a committee that he was a member of.

MR. REYNOLDS: That is correct, sir. What we are doing, as I understand it, at this time is simply identifying the document.

JUDGE ALDRICH: You would rather he gave his personal opinion rather than the opinion of the committee?

MR. REYNOLDS: That is one ground for my objection. It is my understanding that we are simply identifying these documents which have been marked for identification and not as exhibits. I want to object to each and every one of them.

JUDGE ALDRICH: I can understand that you want to object to the introduction of this as an [23] exhibit. Why don't we pass on the admissibility of all three exhibits?

MR. LUCAS: Exhibit 1 I should formally move admission of.

JUDGE ALDRICH: Exhibit 2.

MR. LUCAS: I would like to move the admission of Exhibit 2 as an accurate copy of the Statement on Abortion of the American College of Obstetricians and Gynecologists.

JUDGE ALDRICH: It is received.

It would save time if we had three copies.

MR. LUCAS: I think we have some extra copies.

JUDGE FREEDMAN: These are copies of a statement from the American College of Obstetricians Gynecologists of which, Doctor, you are a member of a subcommittee.

THE WITNESS: Correct.

JUDGE FREEDMAN: Have you participated in the authorship of any of these statements?

THE WITNESS: On Exhibit 4, I was one of the authors, yes.

JUDGE ALDRICH: Would you state your grounds, counsel, for objection?

MR. BEHAR: This witness, I believe —

[24] JUDGE ALDRICH: We are talking about Exhibit 2.

MR. BEHAR: Well, as far as both 2 and 3 go, he has not authored them. He has testified they do not concern minors, and so in our view they are irrelevant. We submit they are hearsay.

JUDGE ALDRICH: Well, I suppose if you wish to press the hearsay argument that they are not identified, there would be some initial trouble right there.

MR. BEHAR: My point is that we cannot question the guide lines.

JUDGE ALDRICH: You do not mean that they have not been identified as a statement of the American College but your hearsay argument went deeper than that.

MR. BEHAR: Yes, your Honor.

JUDGE ALDRICH: Do you object to the identification?

MR. BEHAR: I accept that he has identified these as statements of the American College but that is the limit to what I acknowledge.

MR. LUCAS: We are offering them as such, as evidence of prevailing medical standards, as some evidence of prevailing medical standards.

[25] JUDGE ALDRICH: What do you say to the fact that they do not deal with minors?

MR. LUCAS: The fact that they do not advocate parental consent would tend to show that parental consent was not medically justifiable, and we will question the witness in more detail on that.

JUDGE ALDRICH: Where is the reference to parental consent?

MR. LUCAS: In the Statement on Abortion there is none.

JUDGE ALDRICH: How do we know it relates to minors?

MR. LUCAS: We would say that the absence of any reference — you see the Statement on Abortion has certain requirements and certain restrictions which does not include the restriction on requiring parental consent. This was one way in which the Supreme Court used various standards in *Roe v. Wade* and *Doe v. Bolton*, the absence of parental consent in the Modern Penal Code and the Uniform Abortion Act, we feel would be evidence of lack of medical basis for requiring this. Both Exhibits 2 and 3 are useful as medical background to the subject matter and would be useful in that regard.

JUDGE ALDRICH: We can have that direct [26] from the witness. Exhibits 2 and 3 are excluded.

Q Dr. Sturgis, would you describe —

JUDGE ALDRICH: We are considering Exhibit 4.

MR. LUCAS: I am sorry.

JUDGE ALDRICH: Exhibit 4 will be received limited to the statement being the doctor's own views.

MR. REYNOLDS: May I be heard on that, your Honor? I do not have a copy of Exhibit 4.

JUDGE ALDRICH: I thought it was passed to counsel.

MR. REYNOLDS: It was passed and taken back.

JUDGE ALDRICH: Please take a look at it. I might suggest to you, counsel, that it will save time to put in the document rather than ask individual questions. You are going to have plenty of opportunity for cross examination.

MR. REYNOLDS: If your Honor please, my point was that if the doctor is going to be using this as his testimony it would be helpful if I had a copy in front of me.

JUDGE ALDRICH: I agree with that. But you would not have a copy of his testimony if he [27] testified without it.

MR. REYNOLDS: No, sir, I would not.

JUDGE ALDRICH: Therefore, I overrule the objection.

MR. REYNOLDS: Kindly note my objection to the ruling, your Honor.

JUDGE ALDRICH: You don't have to note your objection in this Court.

MR. REYNOLDS: May I inquire which portions of this exhibit would be accepted?

JUDGE ALDRICH: We understood this was a statement the witness subscribed to and we were receiving it as a recitation of his personal views.

MR. REYNOLDS: May the record show I object to the introduction of it.

Q Dr. Sturgis, would you describe what your findings were in your work on this committee, that is, Exhibit 4?

A The conclusions there of the subcommittee to which I agree were that, first, the minor who is pregnant and refused to tell her parents should be urged as far as possible to bring the parents into the situation since, of course, all minors have a certain degree of financial and emotional dependence on their parents. However, if this was completely [28] impossible, and if the child was adamant in her refusal that puts the doctor into a very different predicament, and we felt that to send the child away without helping her at all was the worst choice, and that to betray her confidence and say, "All right. I'm going to tell your parents on you," was just as much a violation of confidentiality that a lawyer might find himself in with his client, and this was unacceptable to us.

The third possibility then remained, that we should try to consider the medical predicament and the medical reasons for interruption of this minor and use our judgment then concerning her maturity and development, recognizing, I think, that age is no criterion of development and maturity, that each individual must be judged by the doctor, by the man most qualified perhaps to judge the degree of maturity and responsibility as well as the medical need for help.

Q Could you describe to the Court what has been the extent of your experience with minor patients under age 18 who are pregnant, the experience which you personally have had or supervised?

JUDGE JULIAN: I would ask that your testimony be divided into a group of young women [29] between the ages of 16 and 18 and a group of young women between the ages of about 12, when conception becomes possible, and 16.

THE WITNESS: I will try to do so, your Honor, although I do not have a breakdown in statistics. I have been closely allied to a clinic in a neighborhood of Boston where legal

abortions are done after proper counselling and concern, and I think in this clinic we see around 10 percent of our clients under 18 probably and three-quarters of them over 15.

JUDGE JULIAN: Under 16?

THE WITNESS: Under 16, yes.

JUDGE JULIAN: The reason I ask is under Massachusetts law carnal knowledge of a girl under the age of 16 constitutes a felony punishable by a sentence up to life imprisonment.

THE WITNESS: Of course, according to the present law —

JUDGE JULIAN: I am referring to a girl under the age of 16 who is the victim of statutory rape.

THE WITNESS: We do have, of course, numbers of girls under 16, and they must come in with one or the other parent who signs a release.

[30] JUDGE JULIAN: Under what circumstances is that required?

THE WITNESS: I believe it is required under the law of Massachusetts.

JUDGE JULIAN: Under what circumstances would the doctor require the signature of a parent?

THE WITNESS: For any minor under 18.

JUDGE JULIAN: Under 18?

THE WITNESS: Yes. That is in our clinic — I believe that is what is understood.

MR. LUCAS: That clinic is not in this County. The District Attorney from that County has not yet been joined as a defendant in the action.

JUDGE JULIAN: I don't think that makes any difference.

Q Would you continue describing your experience with the medical and psychological aspects of unwanted pregnancies with minors under 18? You might describe the variations with age.

A The younger the girl who is pregnant the higher the risk of that pregnancy. This is well established in terms of prematurity, toxemia, and so forth, and in terms of first pregnancy as well. So that from 12 on indeed the risks, the medical risks of continuing the pregnancy do lessen but at 16 again [31] one must recognize that some 16 year olds are physically and mentally only 12. It is an individual matter.

Similarly I think the trauma of the unwed minor carrying through with the pregnancy, absence from school and the emotional isolation of this youngster from all her peers is a very great problem for her as well as her parents.

Q Yes. In your opinion as a class can minors who are at age 17, for example, give an informed consent to an abortion procedure?

JUDGE JULIAN: A little louder. I can't hear you.

Q In your opinion can minors of age 17 as a class give an informed consent to an abortion procedure?

JUDGE JULIAN: What age?

MR. LUCAS: Age 17.

MR. BEHER: Objection.

JUDGE ALDRICH: Go ahead.

A In my opinion there is no doubt at all that at age 17 most of our youngsters these days are thoroughly able to give an informed consent, and perhaps it is worthwhile to say from a medical point of view their knowledge of the situation is just as good and as broad as their knowledge of venereal disease for [32] which they can now obtain medical treatment without parental consent as a minor.

Q What has been your experience with the ability of 16-year-olds to understand the nature and consequences of an abortion procedure?

A I think —

MR. BEHAR: I object for the record.

JUDGE ALDRICH: You may answer.

JUDGE JULIAN: Do you have an opinion, first of all?

THE WITNESS: Yes.

A I think that at 16 a great majority of the girls certainly would be able to give an informed consent. But the age level is not what a doctor regards as the way to judge whether this individual or that individual should have responsibility for their medical treatment.

Q Do you have an opinion as to whether or not a minor who is 15 could give an informed consent?

MR. BEHAR: Objection.

JUDGE ALDRICH: The question is whether a minor could?

MR. LUCAS: Yes, sir.

JUDGE ALDRICH: That is a rather narrow question.

[33] Q Perhaps I should ask: What has been your experience with the ability of 15-year-olds to give an informed consent?

JUDGE ALDRICH: Has he had any experience? He deals with a clinic which requires parental consent.

MR. LUCAS: The consent of one parent is required. The fact that parents do consent would not necessarily indicate that the minor was incompetent to consent for herself. That would be our position.

We would just like to ask questions about the ability of minors at different ages to understand the nature of the procedure and to give an informed consent to try to establish if age is rationally related to the procedure.

JUDGE ALDRICH: We exclude that question.

Q Doctor, are there any medical reasons for categorically denying an abortion to persons under the age of 18?

A No, sir, I don't think so.

Q Does age have any relationship to the medical needs of a patient with an unwanted pregnancy?

A As I stated before, the younger the child the higher the risk with an unwanted pregnancy.

Q Are there any psychological reasons why a person under age 18 should be denied an abortion procedure?

[34] MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

MR. LUCAS: I think the witness testified that a great deal of his experience in the gynecological area —

JUDGE ALDRICH: Excuse me. Counsel, you should first ask the witness whether he has an opinion and then, in this instance, we would like to hear what the basis of it is, if he has any.

Q Do you have an opinion as to whether there are any psychological reasons for withholding an abortion from a person under 18?

A Yes, I suppose so.

Q What is the basis for your opinion in this field?

MR. BEHAR: Objection.

JUDGE ALDRICH: He may give the basis for his opinion.

A My opinion would be that —

JUDGE ALDRICH: No. On what basis do you rely?

Q What basis in your experience, in your clinical experience, for example, do you rely on?

A Well, my opinion would depend on a quite close experience with these young people from the age of 13 to 16 in their reaction to a pregnancy, in [35] their emotional reaction, and I think I have a fair amount of experience in that.

Q And would your opinion be as to whether there would be any psychological reasons for withholding an abortion procedure?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: We will allow this answer but on the limited basis of your own observations. In other words, you

have not been qualified, as I understand it, in general psychiatry. You have observed these children. You can tell us what you have observed about their emotional state before and after.

A My experience would indicate that in the vast majority of cases these young people are tremendously relieved. I have to say that in my experience I can think of one situation where perhaps psychologically with psychiatric help it might have been urged that an abortion was not done. I am not a psychiatrist, your Honor. In any ambivalent situation I would run to get help from an expert. It could be that once in a while there might be a reason psychiatrically for continuing the pregnancy but this is very rare.

Q Have you personally had any specific training in the [36] psychological aspects of adolescent pregnancy?

A No formal training, no.

Q Have you studied the subject as an academic matter?

A Only insofar as I was interested in reading the literature.

Q Have you read the literature on the psychological aspects of unwanted pregnancy among minors?

A I suppose I have read most of the current literature.

Q Do you read the psychiatric literature in that field also?

A Not now. When I was an editor of a psychiatric psychosomatic journal I used to.

Q Do you have an opinion as to whether there are instances in which there are positive reasons why parents should not be involved in the minor's decision to have an abortion?

MR. BEHAR: Objection?

MR. REYNOLDS: Objection.

MR. BEHAR: Our objection goes to the qualifications, first.

JUDGE ALDRICH: Let's hear what basis you have for an opinion. We are not asking for the opinion, but your qualifications to express it.

JUDGE FREEDMAN: First of all, do you have an opinion?

[37] THE WITNESS: Yes.

JUDGE FREEDMAN: What is the basis for your opinion, without giving us the opinion?

THE WITNESS: I would have to rely on my answer to the previous question. It would just be my experience with a lot of these young people dealing with their problems.

Q Let me ask you one further question on your background and experience. Is it routine practice for gynecologists to also deal with the psychological aspects of adolescents?

A Mr. Lucas, I wish there were more gynecologists who did this. It should be part of the discipline. Unfortunately I am afraid a lot of gynecologists have other surgical interests in mind.

Shall I now answer?

JUDGE ALDRICH: No. We haven't asked what your opinion is yet.

Q Do you have an opinion as to whether or not parental involvement in the minor's decision is necessarily helpful in every case?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: I couldn't hear you. Would you please speak up?

[38] Q Do you have an opinion, and this is a slightly different issue, do you have an opinion as to whether or not parental involvement is necessarily helpful in every case of a minor who is pregnant and under 18?

JUDGE FREEDMAN: Helpful to whom?

MR. LUCAS: I suppose I mean helpful to the clinical evaluation of the minor's problem.

A Yes, I do.

JUDGE ALDRICH: And your basis for that is your experience?

THE WITNESS: As before stated it would be my experience with these young people and their parents.

JUDGE FREEDMAN: Could you give us a rough estimate as to the number of cases you have personally observed?

THE WITNESS: In the last 25 years or 30 years —

JUDGE FREEDMAN: Are you talking about the hundreds or the thousands?

THE WITNESS: Oh, no, I suppose in the hundreds. That would include my experience in the clinics, too, hospital clinics.

JUDGE ALDRICH: You have dealt with [39] parents?

THE WITNESS: Indeed, almost inevitably when one of these questions comes up, your Honor, the parents are called in — at the moment, of course, because it is the law.

JUDGE ALDRICH: The question is whether you have an opinion as to whether in an appreciable number of instances parents increase the emotional problems? Is that your question, Mr. Lucas?

MR. LUCAS: Yes, that is the question.

MR. BEHAR: I am going to object.

JUDGE ALDRICH: He may answer.

A Occasionally when these parents that are totally inadequate in dealing with a youngster's problem — I remember a retarded mother and an alcoholic father, in a situation where the youngster in mid-teens was so desperately out of touch with her parents that to bring them into this situation merely would aggravate an already critical problem. I can also remember another case, for instance, where the mother gave her permission but said, "On no account must my husband know of this. He is a cardiac. I refuse to allow my husband to be in on this at all. I know that it would be perhaps fatal."

[40] JUDGE FREEDMAN: What about cases in which the parents do not have a physical or mental handicap or impairment?

THE WITNESS: Yes, and refuse to go along. The only thing I remember doing is calling in a social worker or psychologist or another doctor to help me try to resolve the dilemma.

JUDGE JULIAN: In most instances do they go along with the doctor or not?

THE WITNESS: I think in most instances they do go along with the doctor, your Honor. I think they depend on the doctor's opinion about the medical risks of continuing the pregnancy.

Q In your clinical practice what are some of the reasons that are given for withholding consent?

A One of the reasons would be just what I have stated — the ability to get along with one or both parents, or it might initiate a difficult cardiac situation or some other medical reason. Often enough the young person is possibly wrong. They are convinced that the parental disapproval would be something she cannot face.

Q Is it just as difficult for the patients to notify their parents as it would be for them to obtain their consent in your experience?

[41] MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: Excluded.

Q Have you ever had instances where the parents withheld consent to punish the minor?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

MR. BEHAR: I don't think he has testified that in his experience parents have withheld consent.

JUDGE ALDRICH: I can't hear you.

MR. BEHAR: I don't believe he has testified that in his experience parents have withheld consent.

JUDGE ALDRICH: The Court is in disagreement about that. You had better ask him, Mr. Lucas.

Q Have you encountered instances where the parents refused consent?

A I don't recall that right now, no.

Q Have you encountered instances where the minors refused to involve the parents?

A I personally have had no experience with that but this did come up sufficiently for the subcommittee —

MR. BEHAR: Objection.

JUDGE ALDRICH: The first part of his answer is received and the rest of his answer is excluded.

[42] Q I don't think I fully understand your answer. Let me just ask you this question about your experience. To what extent are you experienced with instances either in your practice or under your supervision where parents withhold consent or where minors refuse to get consent?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE JULIAN: You keep lowering your voice.

JUDGE ALDRICH: It is more work to listen to your questions than to rule on them.

Q Let me ask you this. Could you describe what your experience has been with minors who do not want to involve their parents in the decision?

MR. REYNOLDS: I object.

JUDGE ALDRICH: He may answer.

A What has been my experience?

Q Yes.

A I can only think of about one case personally that I remember.

Q Have you gained any knowledge from the medical literature about instances in which minors do not want to involve their parents?

A Oh, yes. I think there is a good deal in the medical [43] literature indicating this.

Q Is that the primary reasons for your opinion?

A Right.

Q Have you gained —

MR. BEHAR: I ask that the last answer be excluded. We don't know what the medical literature means.

JUDGE ALDRICH: I don't know what opinion he has given based on medical literature. I was thinking about that.

Q Have the opinions you have given so far been based in part upon your study as an expert gynecologist of the medical literature?

A Yes, sir.

JUDGE ALDRICH: I guess you will have to try to cross examine on this, counsel.

Q In your clinical evaluation of a minor patient what role do you think should be and in your clinical evaluation of a patient to what extent do you take into account the parents' views on whether or not the minor should have an abortion?

JUDGE ALDRICH: In the medical literature?

MR. LUCAS: No, in his clinical evaluation of the patient.

JUDGE ALDRICH: I understood that the [44] clinic he is involved with requires parental consent.

MR. LUCAS: The consent of one parent, your Honor.

JUDGE ALDRICH: All right.

A Yes. Of course this comes into any consideration of an abortion for a minor child. That is not only what one parent but what both parents feel, because this can be a bone of contention between the wife and husband.

Q Is it one of many factors which enters into your decision?

A Yes, it is.

Q What are some of the other factors that enter into your evaluation of the patient?

A As I mentioned before, I think that a doctor and only a doctor can hope to assess the responsibility, maturity and development of this individual who is a minor by age, who may for three or four years, however, be wholly capable of being responsible for her actions. This is the judgment that I hope very much may be reserved for the medical profession rather than litigated in the courts.

Q Do you have an opinion whether it is medically necessary in your practice to avoid parental veto [45] of the minor's decision in making your clinical evaluation?

MR. BEHAR: Objection.

JUDGE ALDRICH: In light of the fact there could be a veto by one, and he has run into that problem, to the extent he may answer.

I mean an attempted veto by one, which they do not recognize.

A As I understand your question: Does this concern the doctor?

Q The question, I think, was whether or not —

MR. LUCAS: Could you read back the question?

(The following question is read:

"Q Do you have an opinion whether it is medically necessary in your practice to avoid parental veto of a minor's decision in making your clinical evaluation?")

A I think, counsel, the physician in trying to evaluate all factors has to take into account the possibility that parental veto may disturb, if you will, the whole situation. It is one of the factors that has to be taken into account.

Q Does parental veto interfere with the exercise of [46] your medical judgment?

A It is possible.

MR. BEHAR: I ask that that go out.

JUDGE ALDRICH: That may go out.

Q Would you distinguish between the mandatory parental consent and involvement of parents in the decision-making process?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE FREEDMAN: Would you rephrase your question?

Q In your evaluation of the patient would you distinguish between involving the parents in the decision as opposed to giving parents control over the decision?

JUDGE ALDRICH: Evaluating the patient for what?

MR. LUCAS: As to whether to go forward with an abortion for the patient, a patient under 18, of course.

JUDGE ALDRICH: The question is whether he would give weight to the fact one parent would disapprove?

MR. LUCAS: Whether he would distinguish the problem of possible parental veto from the problem of possible parental involvement.

[47] MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: We do not understand that question. I thought I put it clearly — immodestly.

Q Would parental involvement be as much an interference in the physician's role with the minor patient as parental veto?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: Can't you put the question just simply whether it makes a difference in his decision as a general proposition if one of the parents says that he is unwilling or she is

unwilling to consent, or do you mean something more than that?

MR. LUCAS: I am trying to distinguish between the problem of notifying and involving the parents on a case-by-case basis as opposed to the parents having an absolute veto in every case.

JUDGE FREEDMAN: I question the worth of this question to your case, counsel, for the simple reason that I thought the doctor had explained that in only one case does he recall one parent vetoing what the other parent had already given, that is, consent.

MR. LUCAS: He also testified as an [48] expert about the broadest scope of the problem. Certainly expert witnesses often testify about things which they do not have any direct clinical experience but have expert knowledge.

I will withdraw that question and I will ask this final question.

Q Can you think personally of any rational reason whatsoever for requiring the consent of both parents in the case of every minor under 18 who is pregnant and seeks an abortion?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: That is much too broad.

Q I believe I asked you earlier about the medical and psychological reasons. I think I will not pursue that question.

MR. LUCAS: I don't think I have any further questions of this witness at this time.

JUDGE ALDRICH: We will take a recess before the next witness and counsel for the defendants can decide whether they wish to make a partial cross examination at this time.

(Recess.)

MR. BEHAR: The defendants reserve their cross examination, your Honor.

[49] JUDGE ALDRICH: Very well.

MR. LUCAS: I would like to call as our second witness Dr. Jane E. Hodgson.

JANE E. HODGSON, Sworn
Direct Examination by Mr. Lucas.

Q Would you state your name and current address, please?

A Jane E. Hodgson, 1537 North Fisk Street, St. Paul, Minnesota.

Q What is your current position, Doctor?

A I am associate professor of obstetrics and gynecology at the University of Minnesota, a full-time teaching appointment at St. Paul's Ramsey's Hospital.

Q Are you licensed to practice medicine in the Commonwealth of Massachusetts?

A I am.

Q Are you licensed in any other places?

A In Minnesota, in the District of Columbia, Kansas and Missouri.

Q Where did you do your residency training in Ob/Gyn?

A Mayo Clinic, Rochester, Minnesota.

Q Do you have your Ob/Gyn boards and in what year did you get those?

[50] A In 1949.

Q How long have you been practicing in Ob/Gyn?

A Since 1947.

Q Have you written articles about obstetrics and gynecology and subjects within those fields?

A I have.

Q Have you attended medical educational conferences in Ob/Gyn?

A Frequently.

MR. LUCAS: May I have the curriculum vitae marked.

THE CLERK: Plaintiffs' 5 for Identification.

(Curriculum Vitae of Dr. Jane E. Hodgson marked Plaintiffs' Exhibit 5 for Identification.)

MR. BEHAR: Your Honor, could we have some sort of agreement that counsel will provide the defendants with copies of exhibits 1 and 5 and also 4?

JUDGE ALDRICH: Yes. The Court would like to have three copies of Exhibit 4. We do not need three copies of Exhibit 1 and Exhibit 5.

MR. LUCAS: I would be glad to do that. I only received the exhibits this morning or we would have had copies.

[51] JUDGE ALDRICH: All right.

Q Would you identify Exhibit 5, please?

A This constitutes a record of my various post-graduate education, my memberships in various medical societies and awards and a bibliography of the articles I have contributed to the field.

MR. LUCAS: We would like to move the admission of Exhibit 5 into evidence as evidence of Dr. Hodgson's background and experience.

JUDGE ALDRICH: Yes.

(Plaintiffs' Exhibit 5 for Identification received in evidence.)

Q Dr. Hodgson, would you describe the extent of your experience in dealing with adolescent gynecological patients?

A As a woman gynecologist since 1947 I think I have seen more than my share of adolescent gynecological patients simply because they seek out a woman or their parents seek out a woman. As medical director at Pre-Term Washington, at the Free-Standing Abortion Clinic I have served there for

almost two years, during which time I supervised over 25,000 first trimester abortions. At the time I left Pre-Term the percentage of patients under the age of 18 that were being treated constituted approximately 11 [52] percent. In Minnesota I have been watching and I have been aware of the increase in this age group that are problem pregnancies, and I have been very much concerned to note that within the last 100 patients that have sought help at the University of Minnesota, 20 percent of these were under the age of 18. For the last 600 patients, however, it would constitute about 13 1/3 percent. This is a rising percentage. It is alarming.

MR. BEHAR: I move that that go out.

JUDGE ALDRICH: Rising percentage.

Q Would you finish describing your experience with adolescent patients or have you completed that description?

A I have completed the description.

Q You also have two teenage daughters, don't you?

A I have one teenage daughter and one who is older, 25.

Q So you are an experienced parent?

A Yes.

Q Have you practiced at all in Massachusetts?

A I have served as a consultant here on several occasions for two of the Free-Standing Clinics in the city here.

Q Did you train any physicians in the medical aspects [53] of abortions at those clinics?

A Yes.

Q Did you train them at all in the psychological aspects of evaluating patients?

A Hopefully.

Q Are the psychological aspects of evaluating patients a part of your practice, your clinical practice?

A It almost has to be.

JUDGE JULIAN: Would you read that question?

(The following question was read:

"Q Are the psychological aspects of evaluating patients a part of your practice, your clinical practice?")

THE WITNESS: I would hope so.

Q Is this delegated to the paraprofessional counsellors also?

A It is delegated to paraprofessional counsellors but the doctor of necessity must play a very important role, a key role actually, in supervising the counselling and taking part in the problem cases.

Q What role, if any, have psychiatrists played in the psychological evaluation at the clinics you have had experience with?

A A very active role.

Q Is this on a day-to-day basis?

[54] A Yes.

Q How many patients or what percentage of patients are evaluated actively by psychiatrists in the Free-Standing Clinics you have had experience with?

A It would be difficult for me to say the percentage but they are in constant touch with the operations of the clinic and are contacted with a number of the problem cases. I could not give you an accurate percentage as to the incidence of consultation but they are kept on a retainer basis.

Q Would you describe for the Court some of the medical difficulties encountered by pregnant minors under the age of 18 in your practice?

A Would you repeat that question?

Q Would you describe for the Court the medical problems, if any, encountered by minors under the age of 18 in your clinical practice who are pregnant?

A The medical problems always are increased in this age group. This has been pointed out repeatedly in the literature

and in my own experience. There is the risk of toxemia and premature labor, hemorrhage, Cesarean section, neo-natal mortality, even maternity mortality is much higher in this age group.

Q Do minor patients under the age of 18 who are [55] pregnant encounter any particular psychological problems in your experience?

A No more than any other group.

Q Are you experienced with the effect on the family of a teenage pregnancy in your clinical practice?

A Teenage pregnancy is very disruptive in the family.

MR. BEHAR: Objection. The answer is unresponsive.

JUDGE ALDRICH: I think that is close enough.

Q Would you describe the manner in which it is disruptive?

A An unwanted pregnancy in a teenager is extremely complicated. The social and psychological problems are many. The youngster usually has to give up an education or there is a question of financial support. There is a question of illegitimacy. There is the question of the increased medical risks. All of these things enter into a teenage pregnancy.

MR. BEHAR: I am going to ask that the answer be stricken as there has been no foundation laid for it.

JUDGE ALDRICH: Denied.

Q To what extent have you dealt with patients who were [56] minors under the age of 18 who have had any difficulty or unwillingness in getting parental consent for an abortion?

A Would you repeat that?

Q What has been the extent of your experience with minors under 18 who had difficulty getting parental consent?

A Actually we do not see that type of patient. They don't get to the qualified clinics. If they are unable to get parental consent, and they usually are determined to have the termination, they will seek help elsewhere and they will go to some of

the unqualified centers or criminal abortionists. So that our actual contact is very small with that group of patients.

MR. REYNOLDS: I object.

JUDGE ALDRICH: Is your objection: Does the lady know whether they go to other places? Or what is your objection?

MR. REYNOLDS: Her answer went further than the question. My understanding of the question was she was talking about her experience.

JUDGE ALDRICH: Well, unless there is something wrong with the next question it is a great waste of time to make the question be asked twice. [57] If she is not qualified to give it, that is a very sound objection.

MR. BEHAR: There is no foundation for the rest of the answer, no personal knowledge.

JUDGE ALDRICH: I will sustain it on that basis but not on the ground it is not responsive.

Q Do you have any basis for knowing what patients do who do not get parental consent and do not want to involve the parents?

A Yes. I have been asked this question from a number of clinics throughout the country. Just last week, for example, in Missouri I was in Columbia as a consultant for the Planned Parenthood Clinic there, and I asked them what they do about the parental consent requirement under the Missouri law where the patients were unable to obtain consent, and they said that they just simply —

MR. BEHAR: Objection. This would be hearsay.

JUDGE ALDRICH: It seems to me to be part of the lady's qualifications.

MR. BEHAR: I believe she said that the clinics were in Missouri, and she is experienced with people in Minnesota and her clinical experience, which would present a problem.

[58] JUDGE FREEDMAN: She testified that in various sections of the country she has attempted to get conclusions and based upon her experience and what she has obtained elsewhere this is what she is now elaborating on.

MR. BEHAR: There is no tie-in between the patients that she is talking about and her clinical experience.

JUDGE ALDRICH: You may answer.

MR. LUCAS: Would you read the question?

(The following question was read:

"Q Do you have any basis for knowing what patients do who do not get parental consent and do not want to involve the parents?")

JUDGE ALDRICH: She did answer that question. Had you finished your answer, Doctor?

THE WITNESS: No, I had not. I was just about to say what happened to these patients. They went elsewhere simply because they were referred elsewhere by the various clinics who refused to accept them without parental consent. They are told where they can go and have the procedure done without parental consent. In other words, the law is being broken all over the country where there is [59] such a law.

Q Was this part of the ordinary clinical practice you observed while you were in Columbia?

A Yes, and the same thing exists right in St. Paul, Minnesota.

Q Are you familiar also with the ability or inability of minors to understand the nature of an abortion procedure and to give an intelligent consent to such a procedure?

A I don't think chronological age enters into the problem except the very immature or the sub-normal, mentally sub-normal individual.

MR. REYNOLDS: I move that that go out, if your Honor please, as not responsive.

JUDGE ALDRICH: That is based on your personal observations, Doctor?

THE WITNESS: That is right, sir.

JUDGE ALDRICH: All right.

Q Do you have an opinion as to whether or not a 17-year old is capable of giving an informed consent to abortion as well as an 18-year-old — I mean 17-year-olds as a class?

MR. BEHAR: Objection.

JUDGE ALDRICH: The question is whether she has an opinion. Do you? Not what it is, but [60] do you have an opinion?

THE WITNESS: Yes, your Honor.

JUDGE ALDRICH: And the basis for that is what you have told us or is there something else?

THE WITNESS: On the basis of my personal experience.

Q Do you include in that basis the experience you have supervised also?

A Yes.

Q What is your opinion as to the ability —

JUDGE ALDRICH: Does this question relate to all or some or many or what?

MR. LUCAS: To 17-year-olds as a class.

JUDGE ALDRICH: Well, there can't be a total class, can there?

MR. LUCAS: No, but the statute does as a class require all persons under 17 to obtain parental consent of both parents. Then I would ask for some details about the specific experiences.

MR. BEHAR: We object to the question and answer.

JUDGE ALDRICH: Mr. Lucas, let's have a more specific basis. How many 17-year-olds has she had this problem with?

Q Approximately how many 17-year-olds have been patients [61] at the clinics where you have had your experience? Can you give us a rough estimate of that?

A It would be at least 2500 under the age of 18 but I could hardly break those down. I'm afraid I couldn't tell you the number of 17-year-olds in that group.

Q But you know how many are under 18?

A Yes.

Q Do you not have any breakdown on it year by year?

A There is a breakdown but I cannot quote it to you.

Q Do you regard the year-by-year factor as being even relevant in the minor's case?

A No, I do not.

JUDGE JULIAN: Doctor, do I understand you to say that there is no significant difference between a 13-year-old pregnant girl and a 17-year-old adolescent in this matter?

THE WITNESS: I think the maturity of the individual depends —

JUDGE JULIAN: I mean generally.

THE WITNESS: Would you mind repeating that, your Honor?

JUDGE JULIAN: You said that there is no significant difference among pregnant girls under the age of 18, which I assume meant that whether they were 12, 13 or 14 or 17 or 18 it made no [62] substantial difference with respect to this.

JUDGE ALDRICH: With respect to their ability to consent. I think that was the question.

THE WITNESS: I think that many other factors enter into their ability to deliver an informed consent, their social condition, their strata in society, their education, their emotional maturity. All these factors are so different that some 12-year-olds will be more mature than 18-year-olds.

JUDGE JULIAN: I understand that. We are not dealing with exceptions. That is why I asked you as a group.

THE WITNESS: As a class undoubtedly the immaturity would be more remarkable in the 12- or 13-year-olds, yes.

JUDGE JULIAN: What do you mean by more remarkable?

THE WITNESS: They would be more in need of parental support.

Q What percentage of 17-year-olds would you say are capable of giving an informed consent in your experience?

A The vast majority.

Q Is there any particular age at which a minor becomes [63] incapable of giving an informed consent in your experience?

A No.

Q Have you ever encountered a 13-year-old capable of giving an informed consent?

A I have.

Q Have you ever encountered a 19-year-old incapable of giving an informed consent?

A I have.

Q Do you consider age just one of many factors in that decision?

A Right.

Q Doctor, have you been a candid advocate of elective abortion in your experience in the last several years?

A I have.

Q Were you the principal party in a court case, which I have given the Court earlier, that overturned the Minnesota law that was passed this year?

A Right.

Q Were you also the principal party in a challenge to the old Minnesota law back in 1970?

A Right.

Q Was this a case where you performed an abortion on a particular patient in violation of the law?

[64] A I did.

Q Did this result in the law being overturned?

A Yes.

JUDGE JULIAN: How high up did that go? Would you give me the citation?

MR. LUCAS: 204 Northwest 2d 199. I do have extra copies of this.

JUDGE JULIAN: What is the title of the case?

MR. LUCAS: State v. Hodgson.

Q Did either of those cases have anything to do with parental consent?

A No.

Q Is there a law on the books anywhere where you practice now which requires parental consent?

A Not to my knowledge. May I add that it is required, however, at the institution where I work and it is enforced.

Q Does this interfere with your practice there?

A It concerns me, yes, it does.

JUDGE JULIAN: It concerns you or it interferes with you?

THE WITNESS: Yes, it interferes.

Q Have you reviewed the parental consent requirement in the recent Massachusetts law?

[65] A I have.

Q Would it be your understanding of that as a clinical practitioner that it requires the consent of both parents?

A Yes.

Q Would you understand that to allow any exceptions, other than an emergency?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: Excluded.

Q Dr. Hodgson, do you have an opinion as to whether there are any medical reasons for categorically denying abortions for all minors under age 18?

MR. BEHAR: Objection. There has been no evidence abortions are being categorically denied to minors?

JUDGE ALDRICH: She may answer.

Q Do you have an opinion? Just yes or no.

A Any medical reason?

Q As to whether there are any medical reasons for categorically denying abortions for all minors under age 18 who cannot get parental consent?

A I know of none.

Q Do you have an opinion as to whether there are any psychological reasons for denying abortions to [66] minors under 18 who cannot get parental consent?

A I know of none.

MR. BEHAR: Objection. She was asked whether she had an opinion. She did not answer yes or no.

JUDGE ALDRICH: We ruled on your objection to the substance and it is overruled.

Q In your experience have there been any cases where there were affirmative reasons in your opinion for not informing the parents of the pregnancy? I am just asking about your experience now without a specific opinion. Have you encountered cases where there were positive reasons why the parents should not be told in your opinion?

A This happens rather frequently, yes.

Q Could you describe some of these cases?

A Illness on the part of the parents where the concern would be so deep, as Dr. Sturgis cited, cases where patients are concerned over their father's coronary status or their mother's emotional illness, alcoholism, marital instability, instability in the home, marital discord. All these things are factors in keeping them from communicating with their parents.

Q Have you also encountered situations where parental [67] involvement would be helpful?

A Yes, indeed. I encourage it in every instance. I think it is extremely important and to be sought after but there is the rare case where it is impossible to obtain.

Q Is it even more difficult when you have to obtain the consent of both parents?

A It simply is an added impediment to the treatment of the patient.

Q Could you make any kind of statement as to what particular kinds of family situations there are when parental consent is difficult to obtain?

MR. BEHAR: I object. I believe she testified that she does not treat patients unless she has parental consent. I am not clear what we are really talking about, what the answer is predicated on.

JUDGE ALDRICH: With that explanation, Doctor, can you answer the question?

THE WITNESS: Sometimes we see the patients and have to refuse them because they fail to obtain parental consent.

We know what they are going to do. So I do have personal contact with that group of patients.

Q What are some of the reasons the parents give for [68] withholding consent and the instances of your experience and where you have supervised?

A Usually it is of a religious nature or they are urging the child into an early marriage. It is usually a matter of morality. They want to conform to society's standards. Illegitimacy is something they dread. Many of these youngsters are forced into early marriages.

Q Do you encounter instances where the parents try to force the minor to have an abortion?

A Yes. I have encountered that a number of times where I felt it was for the welfare of the patient that they continue the pregnancy, if it is their wish to do so, and if there are logical reasons for continuing the pregnancy. As a rule the ten-

dency in these days is for parents to wish to influence the child to terminate the pregnancy rather than the other way around.

May I cite an example? Just last week I had a patient, an Indian girl, age 14, who came from a reservation up in northern Minnesota where her education had been completed, and she was ready to get married, and her boy friend was very supportive, and they wanted to continue the pregnancy but they had been almost coerced into coming down to St. Paul [69] to be aborted, and we refused this patient, and she is continuing her pregnancy.

We encounter this type of thing fairly frequently where a mother refuses to believe that her daughter is mature enough for responsible motherhood and marriage.

Q Are there any national medical standards about the desirability of requiring parental consent, any medical opinions as opposed to legal opinions?

A It is impossible, I think, to develop any standards because each case is an individual problem and has to be evaluated on its own merits. That is why legislation is so difficult.

Q Have you written any articles on the subject of abortion?

A Several.

Q Have you recently published a study of complications in first trimester abortions?

A I have.

MR. LUCAS: May this be marked as an exhibit?

(Study of Complications in First Trimester Abortions marked Plaintiffs' Exhibit 6 for Identification.)

Q Is this a copy of an article you recently published?

[70] A It is.

MR. LUCAS: We would like to offer this into evidence.

JUDGE ALDRICH: Have you given copies to your brothers?

MR. LUCAS: Yes, I have. We would like to offer this as evidence of Dr. Hodgson's experience, clinical experience.

JUDGE ALDRICH: We are waiting for you to show copies to your brothers.

MR. LUCAS: I have given them copies.

JUDGE ALDRICH: I am sorry.

MR. LUCAS: Would you mark this as an exhibit?

(Communication to Minnesota Medicine on the subject of Teenage Mothers marked Plaintiffs' Exhibit 7 for Identification.)

Q Is Exhibit 7 a communication to Minnesota Medicine that you wrote on the subject of Teenage Mothers?

A Right.

MR. LUCAS: We would like to introduce this also into evidence as part of Dr. Hodgson's experience and qualifications.

MR. BEHAR: As far as the study goes there seems to be no breakdown relative to minors [71] on this. It seems to be a rather undifferentiated study. Primarily on that basis we would object to it.

The witness is here in court I assume on the question of the challenged statute. I fail to see how this relates to that.

As to the letter, I think it is totally self-serving. She is here and can testify.

MR. LUCAS: We have introduced them for the limited purpose of showing her experience.

JUDGE ALDRICH: Six and seven are out.

Q In your clinical experience does the fact that a minor patient is going to pay for an abortion enter into your decision whether or not to abort her? Does the profit motive enter into your decision in your practice?

A I hope not.

JUDGE JULIAN: Her own individual practice?

MR. LUCAS: Yes.

Q Do you feel there is any conflict of interest between you and the patient when you are evaluating her from a financial standpoint?

A If there were it would behoove me to encourage them to continue their pregnancy because an obstetrical fee [72] is certainly or is usually higher than a pregnancy termination fee.

JUDGE JULIAN: That would be provided the patient intended to have the same doctor as her obstetrical expert and not for the purpose of aborting her.

THE WITNESS: I perform obstetrics as well.

Q Would you regard it as unethical to encourage the patient to go through with the pregnancy for the purpose of getting a larger fee?

A Obviously.

Q Does the concept of abortion on demand mean anything to you medically?

A I have considered it a very inflammatory term which has been used by the opposition of abortion law reform to arouse the medical profession, I think, more than anyone.

Q Is the availability of elective abortion accepted by the national medical organizations in Ob/Gyn?

A Yes.

MR. LUCAS: I think I have no further questions.

JUDGE ALDRICH: Thank you, Doctor.

MR. BEHAR: We would reserve cross [73] examination of this witness, your Honor.

MR. LUCAS: Dr. Carol Nadelson. We would like to call her as our last expert witness.

CAROL NADELSON, Sworn
Direct Examination by Mr. Lucas

Q Would you state your name and address.

A Carol Nadelson, 30 Armory Street, Brookline, Mass.

Q What is your current position, Doctor?

A I am assistant professor of psychiatry at Harvard Medical School and associate psychiatrist at Beth Israel Hospital in Boston, and director of medical student education for the psychiatry department at Beth Israel Hospital.

Q Would you tell the Court what your educational background in this field has been?

A I received my M.D. degree from the University of Rochester in 1961. I subsequently interned in medicine at the University of Rochester Hospital. I subsequently came to Boston and had two years of psychiatric residency training at Massachusetts Mental Health Center and two additional years at Beth Israel Hospital and I have been on the staff since that time.

[74] Q What has been your experience with evaluating adolescent patients, female adolescent patients?

A The greater percentage of both my teaching and clinical practice has been devoted to adolescents not involved in any way with pregnancy. A significant percentage — for a period of several years when I was liaison psychiatrist for the obstetrics and gynecology department — was devoted to evaluating pregnant teenagers.

Q Are you licensed to practice in the Commonwealth of Massachusetts?

A Yes.

Q What has been the extent of your experience with evaluating teenagers who are abortion candidates?

A Well, up until last year I either saw personally or supervised and consulted on every teenager who was aborted or

who asked to be who came to the Beth Israel Hospital. Prior to that, I guess it was 1971, I was involved mostly with the direct evaluation. I was not responsible for the program. At that point I directed the program and was responsible for evaluation and decision-making.

Q Would you describe in your experience what the impact of an unwanted pregnancy is upon a person under age 18?

[75] A Most of the youngsters we see at the time we see them — and I might add we usually see them on referral from some other agency or on self-referral, and we see them after they have already had the diagnosis of pregnancy made, and they tend to be generally quite upset, often non-communicative and withdrawn, sometimes very sad, anxious. The response varies with the youngster. It has a lot to do with what her previous adjustment was like and what her home situation has been like.

Q Does a requirement of parental consent ever delay the stage at which they have an abortion?

A Yes.

Q Is this hazardous in any way to the patients?

JUDGE ALDRICH: Louder, please.

Q Is this hazardous to the patient in any way, this delay?

MR. REYNOLDS: Objection.

MR. BEHAR: Objection.

A Yes.

JUDGE ALDRICH: There were two questions I never heard. What was the first one?

MR. LUCAS: The first question was whether the requirement of parental consent ever delays the patient in being scheduled for abortion.

[76] THE WITNESS: Yes.

JUDGE ALDRICH: What was your next question?

Q Whether this poses any hazard for the patient?

A Yes.

JUDGE ALDRICH: From a medical point of view?

MR. LUCAS: First medical and then psychological.

MR. BEHAR: I object on the medical.

JUDGE ALDRICH: She may answer.

A From a psychological point of view it does also.

Q In what way does it pose — does delay pose a psychological hazard to the patient?

A Well, when you have a person who is already in a crisis situation and is extremely anxious their anxiety increases and often they develop symptoms like sleeplessness, weight loss, loss of appetite, they don't want to go to school. There is a whole variety of other kinds of anxiety-related problems. Sometimes teenagers who do not have the same delay capacity that adults have will do something impulsive while waiting because they cannot tolerate their anxiety.

Q To what extent have you had direct contact with [77] teenagers who could not get parental consent?

A I have had some contact with those teenagers. In the past we would see every teenager regardless who came in, and if a teenager refused or felt she could not get parental consent we would try to explore why and try to make some assessment as to what we could do and also to encourage her to get parental consent or involve her parents. All our evaluations whenever possible do involve parents.

Q What do these patients give as reasons for not wanting to involve the parents?

A As the doctor who just testified stated, and I have had similar experiences, it is often parental illness, alcoholism, and I am talking about both physical and emotional illness. I might add something that I think is terribly important and that is that a good many of the teenagers we see in our clinic either do not have both parents available, never have, or do not know the whereabouts of one of their parents, and some of their family situations are extremely unstable.

Q What are some of the types of family situations that lead to this conflict between parents and child, the minor?

A It is variable. It depends on the group. But often a child will feel that they cannot talk to their [78] parents, one or the other of the parents do not understand, and the fear of upsetting them. They sometimes have no contact with the parents.

It is not at all infrequent that a teenager will never have seen one of her parents or have no idea where they are and they feel very disconnected from them.

The parents, on the other hand, often feel guilty and angry. They may feel punitive towards the child if they feel they have been injured by her action. And sometimes they feel they are doing the best thing and the teenager thinks something else is the better thing. So it is just a difference of opinion.

Q Do you have any experience or contact with patients after they have had abortions?

A Yes.

Q Would you describe the psychological reactions of minors under the age of 18 after having had an abortion?

A Most of the teenagers I have seen who have had an abortion feel relieved by it. They feel that they have done the right thing and have a second chance often. There are a very small percentage who feel guilty and a very small percentage that are sorry [79] about it, — really less than 1 percent in my experience. Most teenagers feel that they are better off afterwards than they were before or in fact many of them feel, and it is certainly evident clinically, that they have grown from the experience, especially if it is handled properly.

Q Do you have any experience with the effect of continuing the pregnancy on these minors?

A Yes. We have a teenage clinic at the Beth Israel where youngsters who want to continue their pregnancy are seen, and the problem that tends to arise is that the time of delivery

most of the youngsters we see want to keep their babies. They do not want to give them up for adoption.

It is becoming more and more usual for youngsters to want to do that, and they get into sometimes serious difficulty in terms of their maturity and in taking care of their baby. If they come from a stable family they can get some help sometimes but most of the teenagers we see do not come from stable families, and it is difficult for them to get help, and it is very difficult for someone who is still a child to have a child and bring up a child.

JUDGE FREEDMAN: Do you often get repeat [80] patients?

THE WITNESS: Yes.

JUDGE FREEDMAN: They have been aborted and have come back again?

THE WITNESS: Yes. I cannot quote the exact figures but it does not seem to make much difference about whether they have had an abortion or a pregnancy carried to term. The repeat rate is high in either case.

Q Do you have an opinion, yes or no, as to the ability of a person under 18, a minor pregnant, a minor under the age of 18, to give an informed consent for an abortion procedure?

A Yes.

Q Is this opinion based on your experience that you have previously described?

A Yes.

Q What is your opinion?

A I believe they can and do. I do feel that what is required is a very careful explanation and time in order to understand fully the implications of their decision.

Q Could you give an estimate of approximately how many, what percentage of 17-year-olds could give such an informed consent?

[81] A That is very difficult. Most of the 17-year-olds certainly are quite clear. I think the difficult time is in the 11, 12 and 13-year-olds that we see. It is much more time consuming and difficult for them to understand what it means. A teenager generally does not connect pregnancy — the events leading to pregnancy with pregnancy and with having a baby. Those three are not connected the way they are in most adults' minds.

Q With the class of patients under 13 is parental involvement a magic solution to the ability of them to understand?

A It is helpful, it is extremely helpful, and we try very hard to get everybody, the entire family, involved if we can, as many people as can sit down together and talk about it. It is not always possible.

Q Do you encounter instances of parents opposing abortions of 13-year-olds?

A Yes.

Q On what grounds?

A Well, the usual reasons tend to be religious or moral reasons, but parents sometimes will label a youngster as a bad kid and feel she needs to be punished, and that is the way to punish her, and that she will improve if she is punished. That is [82] a misguided view but it is held.

Q Is it psychologically more dangerous for a 13-year-old to go through pregnancy than to have an abortion?

A In my opinion it is but I cannot present data on it. It is a clinical judgment.

JUDGE ALDRICH: Would you read back the answer?
(The answer is read.)

Q In your opinion can a majority of 14-year-old pregnant minors give an informed consent?

A Yes.

MR. LUCAS: I have no further questions.

JUDGE ALDRICH: Thank you, Doctor.

MR. LUCAS: We do not plan to call any more witnesses. There have been depositions of Dr. Zupnick and Mr. Bill Baird and Mary Moe I. We have only gotten Mary Moe I's deposition. The others will probably be here soon. I have not had time to read Mary Moe's deposition and she hasn't. We have no further witnesses to call.

JUDGE ALDRICH: The suggestion we made a little earlier was that the continued hearing would be a hearing on the merits at which time you would commence your cross examination of the witnesses we have already heard on direct examination.

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DECEMBER 30, 1974.

[2] THE CLERK: William Baird and others v. Robert Quinn and others.

MR. BEHAR: Dr. Sturgis.

SOMERS H. STURGIS (Resumed)
CROSS-EXAMINATION BY MR. BEHAR.

Q Doctor, would you restate your name for the record?

A My name is Somers H. Sturgis. I live at 47 Raymond Street, Cambridge, Massachusetts.

Q Doctor, you indicated on direct examination that pregnancy, an unwanted pregnancy may be an emotional tragedy to a minor; is that correct?

A Yes, indeed.

Q And isn't it also the case that an abortion may prove to be an emotional tragedy for a minor in your experience?

A Of course this is so and one has to judge which —

MR. BEHAR: I move that that be stricken. He has answered the question.

JUDGE ALDRICH: The answer is yes. On the other hand, I see no reason why the witness should not be allowed to explain. It is not responsive to your question, but we might as well have it now as some other time.

MR. BEHAR: Please note by objection.

JUDGE ALDRICH: All right. Your objection is sustained. We will put the witness back on later.

[3] Q Doctor —

JUDGE ALDRICH: I don't think, I may say, that you advance the proceedings very much by this procedure.

MR. BEHAR: Very well. I will withdraw the objection.

Q Would you explain, Doctor?

A The physician must decide whether the trauma, both mental and physical, of carrying the baby to term and the labor thereof is worse or less than an abortion.

Q Isn't it the case, Doctor, that even when that decision is reached and an abortion is, in fact, performed, that operation may constitute an emotional tragedy in that minor's life?

A It is possible in some cases. This is why one counsels these children.

Q In fact, the literature is replete with cases where that has, in fact, happened; isn't that the case?

A I am not familiar with many authors of this sort, no.

Q Doctor, on direct examination your attorney and you referred to the word abortion. Do you make any distinction between first, second and third trimester abortion?

A Of course.

Q When you used the term abortion, for example, in giving your opinion that a majority of 16 year olds can consent, [4] give an informed consent to an abortion, when you used that term, which trimester were you referring to?

A In general, you refer to the first trimester as an abortion. A third trimester is a premature labor, premature miscarriage.

Q What about the second trimester?

A This may be either way.

Q When you gave your opinion, for example, that 16 year olds, a majority of 16 year olds can give an informed consent to an abortion, were you, in using the term abortion, referring to second trimester abortions?

A Occasionally, yes.

Q Isn't it a fact, Doctor, that the medical procedure is more complicated the further on in pregnancy a minor or any woman is?

A The procedure for the second trimester cases is a very simple one actually. In some ways, it is technically much simpler than a first trimester.

Q What is the standard technique for a second trimester?

A Generally, admitting a needle into the amniotic sac of the pregnancy and introducing some material, such as saline solution, that will institute a labor situation, so that the fetus is carried through as in labor.

Q But when you use the term abortion, you are not referring then to third trimester abortion?

[5] A No.

MR. BEHAR: I would ask that the witness be shown a copy of Exhibit 4.

Q You stated, I believe, that that exhibit reflects your own personal views?

A Yes.

Q Isn't it a fact, Doctor, that your personal views as reflected in that exhibit demonstrate that there are minors who are too immature to give an informed consent to an abortion?

A Would you rephrase that question?

Q Your personal views as reflected in that exhibit, aren't they such that they recognize that there are minors who are too immature to give an informed consent to an abortion?

A I would have no hesitation in not agreeing with you in that, sir, because we have always stated that the spectrum of maturity is not limited to age but to the individual.

Q And the problem exists relative to minors in the age group 12 through 17?

A Yes.

Q You have indicated that the physician is put in a problem situation where the minor will not have parental involvement, and you suggest that where parental cooperation is impossible to secure that there is a problem. Does that mean that there should be some effort made to secure parental [6] cooperation?

A Indeed, I fully feel that that is correct.

Q What should this effort consist of?

A Trying to get hold of the parents, if available, and having her and the child come together to talk to the physician.

Q Do you think it good medical practice when absolutely no effort is made to encourage parental cooperation and involvement?

A Sometimes it is impossible.

Q As a general proposition though, it is your view that an effort should be made in that direction?

A Personally, I would myself make every effort to get the parents involved, if it is possible. Sometimes the parents are not available, either one.

Q If the parents are, in fact, available, the effort should be made; is that what you are saying?

A Personally, I would feel so.

Q Exhibit 4, which reflects your personal views, indicates that in a situation where a minor refuses to involve her parents and is not found to be mature by the physician, that a doctor should not act on his own responsibility; is that your view?

A Correct.

Q Who should he draw into the process in your view in the [7] situation?

A I think anyone trained in this area. It may be another doctor. It may be a social worker or a psychologist or a psychiatrist. It may be a minister or someone who is aware of the problem and willing to work on a solution.

Q Isn't it a fact, Doctor, and isn't it accepted medical/legal practice to oftentimes draw in the courts in these situations?

A I don't happen to remember that that is the case, but I think it is mentioned in the literature.

Q Well, we are all familiar with the common situation, say of a Jehovah Witness, for example, who is opposed to having an operation performed on a minor. Isn't that a situation where typically resort is had to the courts?

A There is one big difference and that is the time factor. Since a child who is 10 or 11 weeks pregnant has only a very limited time to become a ward of the court, for example, and as to a Jehovah Witness in general the time factor is not too pressing as it is in the case of a pregnancy.

Q Doctor, isn't it a case where a situation often arises in an emergency where a transfusion, for example, must be administered with speed? We are all familiar with these situations.

A Indeed, in most hospitals there is a chain of command to make it very easy to do because this happens frequently, but in situations we are talking about, that is, where one [8] parent is missing and the other is in the House of Correction or something, we do not get this kind of situation often enough to work out some quick and easy and passive method of getting a court decision. At least I don't know of any.

Q The courts have traditionally been a source of resolving these kinds of parents-child conflicts, have they not?

A Well, there is no tradition involved because it is all so new. This problem —

Q Don't the courts even come into play in the situation where the interest of the parents and child and co-extensive, for example, in the donor situation or in donation where you have a situation where there may be twins, and the parents and one twin agree that a kidney, for example, should be donated to another twin, don't the courts typically sanction those kinds of procedures in your experience?

A I may be wrong, but I believe only one parent's consent is necessary in those cases. It seems strange that in an abortion two parents' consent should be necessary.

MR. BEHAR: I move that the last part go out.

JUDGE ALDRICH: Yes, that may go out.

Q You have indicated that it is generally desirable to have parents involved in the situation of a minor faced with an abortion.

A I would say a parent involved, yes, sir.

Q What benefit does parental involvement bring both to the [9] minor and the family in your experience?

A Well, if a parent can be present and involved in the situation, then the support of that parent is beneficial to the child.

Q What about the family? Have you known the family to grow from such involvement?

A I would think that is entirely up to the parent. There may be other siblings. It would be up to the parents to know whether it would be helpful for them to be involved or not.

Q Would you, in your best medical judgment, accept any reason a minor might advance for not telling her parents that she is pregnant?

A I should think I can think of reasons, yes.

Q Are there any reasons a minor might advance for not telling her parents that you would find unacceptable?

A I can imagine there would be some of those, too.

Q Could you reflect and state to the Court what those might be?

A On the one hand, as I mentioned, one can have a situation where the mother herself — the child herself is pregnant — is illegitimate and her mother is totally uncooperative with this child's actions. I can think of a Roxbury family where the father was away, and he had not been back, and there was no parent other than the mother who was totally unsympathetic to the child. It would have [10] been very difficult for the child.

JUDGE ALDRICH: I don't think you have made it at all clear to the witness what your question is, counsel.

Q My question is, are there any reasons a minor might give for not informing her parents she is pregnant that you would not find acceptable or would you accept any reason?

JUDGE JULIAN: I find the use of double negatives in your question confusing to me. Avoid the use of double negatives.

JUDGE ALDRICH: We go further than that. This is purely speculative matter. You can argue that to the Court.

MR. BEHAR: Do I understand you are excluding the question?

JUDGE ALDRICH: That particular question, yes.

Q Suppose a minor has no reason for not telling her parents she is pregnant, would you accept that as a valid excuse for not informing the parents?

A If she has no reason for —

Q She just says, "I don't want to inform my parents and I am not going to tell you why." Is that acceptable to you?

A I feel this is exactly where the counseling aspects of this question should come up and I would want to take time to talk to this child a good bit more to see if I can find out [11] what the reasons were.

Q If there is a refusal by the minor to inform her parents, in your experience and training is that symptomatic of perhaps an emotional upset relating to the pregnancy?

A Oh, indeed it may not be so. It may be quite easy to understand why she might not want to. It still leaves the physician in a great deal of a problem.

Q What I am saying or what I am asking you, Doctor, is whether the fact that a minor does not want to inform her parents of her pregnancy, is that fact symptomatic of emotional problems with that child?

A It may certainly not be so.

Q May it also be so?

A In some circumstances, possibly, but all of us know that some children are emotionally unstable and others are very stable. That is up to the physician to try to decide.

Q You indicated for the minor who refuses to inform her parents of her pregnancy that it is important for the physician to consider the medical predicament and the medical reasons

for interruption of this minor. Does that mean that a pregnancy of a minor should only be interrupted for medical reasons?

A If you will include in the medical reasons what I have said. The trauma of the abortion in the physician's opinion being far less than the trauma of carrying through the [12] pregnancy, this is a medical judgment, I presume, and partly founded on the knowledge that the younger the mother, the younger the child who is pregnant, the greater are the medical risks involved in carrying through the pregnancy.

Q Have you encountered any situations where there would be no medical reasons for interrupting the pregnancy of a minor?

A I can't think of any.

Q So it is merely the inherent risk of the pregnancy that justifies the procedure; is that what you are saying?

A Yes.

Q You indicated that in your view it is the doctor who is the person most qualified to judge the degree of maturity and responsibility of a minor who refuses to inform her parents; is that correct?

A Yes.

Q Isn't it a fact, Doctor, that in the patient-doctor relationship that is often sporadic in nature?

A It may be.

Q In fact, you may have a situation where the minor who is refusing to inform her parents may have only contacted that doctor on one occasion, that particular time; isn't that right?

A That may be so.

Q And are you telling this Court that a doctor who has sporadic contact at best with a patient is in a better position [13] than parents to gauge the maturity and responsibility of that minor?

A I can only speak of my own experience and say that I believe that as a physician dealing in these matters for some time, I can perhaps apply a fair degree of expertise in trying to gauge the medical risks involved in either an abortion or carrying through the pregnancy. That sporadic interview may be an hour.

Q Is an hour in your view the kind of time that should be spent individually with a patient?

A It is generally adequate in this particular situation to summarize what is the problem involved.

Q And this is a one on one contact with the minor?

A It may be myself or one of my well-trained social workers.

Q Isn't this a situation, Doctor, where the minor wants something from the doctor? She wants to have an operation performed upon her; right?

A Yes.

Q And isn't it likely in that kind of situation that she is going to tell the physician what he or she wants to hear?

A I suppose.

Q And isn't it a fact, Doctor, that given that kind of a situation it is very difficult to gauge the maturity and responsibility of a minor?

[14] A As you recall, in my exhibit here, this is the situation where the doctor is wise to call in another, whether a social worker or another doctor, to support his view.

Q So the doctor clearly should not be making this kind of judgment alone?

A I am only speaking from my own experience and saying this is what I would do.

Q I understand that. Can you state to the Court why informed consent is necessary at all to this procedure?

A By informed consent one implies telling the patient what is going to happen to make it easier for her to accept a

certain amount of discomfort, to allow the client-patient to cooperate in the procedures the doctor is going to do, whether it is an appendectomy, a tonsillectomy or an abortion. It is terribly important in all medical problems.

Q In your experience, aren't there different levels at which a person can appreciate — well, let's take an abortion procedure.

A Of course.

Q There is the emotional level?

A Yes, indeed.

Q Isn't it a fact, Doctor, that it is difficult in an hour interview to gauge at which level a particular patient is appreciating the consequences of the medical procedure?

A This is exactly where the background of the doctor [15] will be helpful because a minor child finds it very difficult to appreciate the emotional trauma of a two year old infant of hers, let's say — the knowledge the doctor has of what the trauma of the sixth to ninth month of pregnancy may entail in this child, or the delivery risk — these things the doctor knows about and it is very difficult to expect the child to appreciate this, even though the doctor may try to impress the child that this is what is going to happen. It is his knowledge and background that one must rely on in making the decision.

Q Is it your testimony that a minor has difficulty appreciating the long-term consequences of a pregnancy, but somehow has a better appreciation of the consequences of an abortion?

A Oh, yes, I think that is true. An abortion, you see, is a direct and immediate situation. This is something that can be appreciated by the child. It is something that is going to happen. The child can figure what will happen tomorrow or today or the next day, but to help the child appreciate ahead is a thing the physician must keep in mind in making a decision.

Q Isn't it a fact that minors particularly, and it is part of growing up, that minors particularly have trouble taking a long view?

A Of course.

Q And isn't it really on the emotional level the long-term [16] view that we are really concerned with?

A I agree that that is what I think the doctor knows about.

Q The fact that there might be an immediate feeling of relief or understanding does not necessarily mean an appreciation of long-term effects, does it?

A Well, no.

Q When you gave your opinion on direct testimony relative to 16 and 17 year olds, that a majority can give informed consent, I take it that means that a minority can not?

A Yes, of course.

Q Do you know what an abortion center is, Doctor?

A What an abortion center is?

Q Yes.

A I don't know what you mean by that question.

MR. LUCAS: I object to the relevancy of that. That is probably more tied up in another lawsuit which should not be tried in this court today.

MR. BEHAR: I believe it is relevant to the class action allegations here. I believe it is relevant to the class action motion that these plaintiffs have filed. They purport to represent abortion centers. I am asking this doctor if he knows what it means.

MR. LUCAS: There has been no motion filed to vacate that class action order.

MR. BEHAR: There certainly has been.

[17] JUDGE ALDRICH: I understood there was an attack made on a prospective finding this was an appropriate class.

MR. LUCAS: I understood the Court had ruled.

JUDGE ALDRICH: I didn't think we had.

MR. LUCAS: I don't see where this particular question has any relevance.

JUDGE ALDRICH: Maybe it doesn't. We will take it.

Q Do you know what an abortion center is?

A I don't know what you mean. Would you explain to me what you mean?

Q I am not sure I know what the term means, Doctor. You indicated that you were associated with an abortion clinic in this area.

A That is correct.

Q Would you identify it, please?

THE WITNESS: Your Honor, I would prefer not to bring in the name, but if it is important —

JUDGE ALDRICH: What is the relevancy?

MR. BEHAR: Well, there will be testimony as to what the physical set-up is at the Parents Aid Society, and in our view, it is relevant to compare structurally what goes on at this particular plaintiff-corporation with what goes on and what exists at a clinic, for example.

[18] JUDGE ALDRICH: Well, we begin right off by saying it is not proper cross-examination of this witness.

MR. BEHAR: May I be heard briefly?

JUDGE ALDRICH: Yes.

MR. BEHAR: I believe on direct examination the witness indicated part of his experience was his association with a clinic in the Boston neighborhood, I think he put it, and it seems to us proper cross-examination is to find out what the experience is at this clinic. I think it reflects upon what his testimony has been.

JUDGE ALDRICH: In what way do the individual persons at this clinic, which the witness would like to respect the privacy of, bear on what you are pointing out?

MR. BEHAR: I am not asking him to identify the names of anybody.

JUDGE ALDRICH: I thought you were.

MR. BEHAR: Just the name of the clinic. I happen to know the name of the clinic. I defended the clinic's position in a lawsuit myself. I am not critical of the clinic. I think bringing the name out does not prejudice anybody.

JUDGE ALDRICH: The witness feels it does.

THE WITNESS: I would prefer not to.

MR. BEHAR: Okay.

[19] Q But you are associated with the clinic?

A That's right.

Q Did you help set policy for this clinic?

A Yes.

Q Medical policy?

A Yes.

Q Was policy set regarding parental consent for procedures performed on minors?

A Of course. We have always had one parent's consent.

Q And you required that?

A Yes.

Q Did you deem it to be good medical practice to have such a requirement?

A At that time it certainly seemed so. This was in 1973.

Q Is this clinic licensed?

A Yes.

Q Can you tell the Court briefly what a licensing procedure is, if you know?

MR. LUCAS: We would object to any inquiry into this because the question of the validity of the licensing statute is at issue before another judge in this court.

JUDGE ALDRICH: I don't take it that that is the purpose of the inquiry. The purpose of the inquiry seems to be either to attack the witness' experience or to support it. I don't know which at the moment.

MR. LUCAS: Whether or not the clinic has complied with [20] licensing requirements, I don't see where that has anything to do with the question we have here.

JUDGE ALDRICH: As to this particular question, I would agree.

MR. BEHAR: Note my objection.

Q Doctor, does the clinic in question have any back-up agreements with any other health care facilities in the Commonwealth?

A Yes, of course. The State, in its regard for the welfare of patients, of medical clients, has established certain policies and has set up various measures and methods to see that these are taken care of. One of these is to have a back-up facility within a few short minutes drive from a clinic if the clinic was in a non-hospital facility.

Q Are these back-up agreements formalized in writing?

MR. LUCAS: Objection. This is irrelevant. He is trying the clinic licensing case.

JUDGE ALDRICH: What do you say?

MR. BEHAR: I am not trying to do anything of the kind. I want to establish from this witness that it is good medical practice, given a given volume of surgical procedures performed at an institution, to have back-up agreements.

JUDGE ALDRICH: He already said he had one. [21] What more do you get?

MR. BEHAR: This plaintiff might not have one.

MR. LUCAS: This is not any more relevant than the type of novocain used at the clinic.

MR. BEHAR: I suggest it is relevant. This is the kind of inquiry a parent, as opposed to a child, might make as to what kind of back-up agreements and what kind of patient safety was involved at a particular institution.

JUDGE ALDRICH: What particular question do you want?

MR. BEHAR: I believe the question I asked was whether the back-up agreement was formalized in writing.

JUDGE ALDRICH: What difference does it make?

MR. BEHAR: In our view, it would show there is an on-going relationship with a hospital. It seems to me that if I were a parent and I were going to have surgery performed on a child, I might want to know what kind of back-up agreements there were in case something went wrong.

MR. LUCAS: It would be our position that this type of regulation has been declared unconstitutional by the Supreme Court because it forbade first trimester clinic regulation. We handed up to the Court earlier a copy of the three-judge court decision specifically declaring this [22] transfer of agreement provision unconstitutional. We would object to inquiry into whether or not this clinic or any other clinic complies with those regulations. It is simply beyond the rights of minors issue.

MR. BEHAR: I will withdraw that question.

JUDGE ALDRICH: Thank you.

Q (By Mr. Baher) Do you know of your own knowledge how many abortions are performed at this clinic per week?

A Per week, about 40 or 50.

Q Is it your best medical judgment that where abortions are being performed in such volume that a back-up arrangement with another health care facility is good medical practice?

A Interestingly enough —

MR. LUCAS: I object to this as being an attempt to circumvent the Court's ruling.

JUDGE ALDRICH: I don't know how much of a ruling we have made. He can answer that question.

THE WITNESS: I'm sorry. Would you repeat the question?

(The following question was read:) "Is it your best medical judgment that where abortions are being performed in such volume that a back-up arrangement with another health care facility is good medical practice?"

THE WITNESS: I certainly agree, but that may [23] not be in writing. In fact —

JUDGE ALDRICH: That answers it.

Q Doctor, in your judgment, would it be good medical practice for a doctor or a clinic to agree to perform an abortion upon a minor on the basis of a ten-minute phone call?

A From my own personal opinion — I don't think I would ever have done that my own self.

Q In your opinion, Doctor, would it be good medical practice for a licensed physician to consult with a patient, a minor patient, before that minor patient signs a consent form?

A No, that is not necessary. In my own clinic the major part of counseling preparation and explanation comes from a social worker who sees the patient and I or the doctor may have no time to see the patient but will depend entirely upon the experience and expertise of those that are preparing the patient.

Q You do not go over the form yourself?

A The form, yes, because there has to be a consent form signed by the patient that she understands what is going to happen.

Q Do you go over that with the patient yourself?

A I or the doctor that is going to do it will.

Q It would be good medical practice to do that?

A I have always done it myself.

[24] Q You indicated that the younger the girl who was pregnant the higher the risk to that pregnancy; is that correct?

A That is correct.

Q Isn't it a fact, Doctor, that pregnancy is only particularly risky relative to 12 and 13 year olds, in that age group?

A Oh, no. It depends entirely on the physical maturity, not the age of the patient. There are many 17 year olds —

Q Isn't it the case, Doctor, that with good prenatal care the pregnancy of, say, a 15 or 16 year old is as safe as that of a 20 year old?

A Well, you see —

Q Can you answer that yes or no?

A No, I can not.

Q Isn't it a fact, Doctor, that pregnancies in late adolescence are as safe as those beyond adolescence?

A If you define adolescence the same way I would, then I would agree.

Q How do you define it?

A I would say that adolescence is from puberty, when the child begins to develop, to full maturity.

Q And if you define adolescence as such — ?

A The later in adolescence, the closer to maturity.

Q And the pregnancy is as safe during that time as it is beyond adolescence?

A Yes. If you say —

[25] Q I think you have answered the question.

JUDGE ALDRICH: I don't think he has.

A Would you define how late in adolescence you mean?

Q Let's take from 16 to 18.

A Would you rather say within six months of being fully mature? It may be any age. Then I would say yes — within six months of being fully mature.

Q But beyond that, you are not prepared to make that statement?

A No.

JUDGE FREEDMAN: Well, haven't you stated on several occasions that the question of danger of an abortion as opposed to carrying through to full term depends upon the physical maturity of the individual rather than the age?

THE WITNESS: Yes, Your Honor.

Q And the same could be said for the risk of an abortion, could it not, namely, that the younger the minor the riskier the procedure, the abortion procedure?

A No, that is not quite right. The risk entails the extent of the pregnancy rather than the age of the patient.

Q You are not saying there is no risk in the abortion procedure?

A There can be a risk to cutting your fingernail. It is not the age of the patient so much as — well, there is surely some connection, as you have suggested, between the [26] risk being greater for any procedure the younger the patient, but that is not as medically important as the extent of the pregnancy.

Q And that goes for pregnancy, too?

A Yes.

Q You have indicated there are risks. Are there risks in your experience in this procedure?

A In any procedure whatsoever.

Q I have not asked you about any procedure. I am asking you about the abortion procedure. Are there medical risks and complications that attach to this procedure?

A Of course.

Q Could you, based on your experience and training, detail for the Court what these are?

A The risks involved in abortion may be a certain amount of temperature reaction, a certain amount of bleeding, cramps or pain. These things may certainly be quite prevalent in any of these procedures.

Q Would there be danger of perforation of the uterus in this procedure?

A That is a remote possibility if the procedure is done by trained physicians.

Q Are there any of these complications that would require hospitalization, Doctor?

A A perforation certainly could. I think this would be [27] very, very unusual and unlikely to happen. Severe bleeding could mean hospitalization or an unknown temperature reaction would perhaps require medical care.

Q In your judgment relative to these complications, if they occur to a minor who had not obtained parental consent for an abortion, in your judgment, do you think the parent ought to be informed relative to the complications once they resulted in hospitalization?

A I would think so.

Q Isn't it a fact, Doctor, that if a parent was notified in a situation where the minor had been hospitalized as a result of complications, the emotional impact on that family would be far more deleterious than it would have been if the parents had been involved at the outset?

A You are presenting a possibility so remote it is hard to answer anything to it. I suppose you can think of situations like that. But, in the first place, the numbers of patients who do not have parental consent and have complications are very, very few. If you were to multiply these rare occasions, I suppose you could find a situation where the answer should be yes to your question.

Q Are you familiar with the term morbidity as used in relation to abortion?

A Yes.

Q Would you tell the Court what you understand that term to [28] mean?

A Morbidity refers to the type of complication that I mentioned, that is, the non-fatal situation of a temperature or an infection or bleeding or something of this sort.

Q Doesn't the term really go beyond the actual complication but looks to long-term effects of the particular complications?

A No, I don't think morbidity has any further meaning than just what I said.

Q You indicated on direct examination that it is important for the gynecologist to deal with the psychological aspects of an abortion situation for a minor. Is that correct?

A Surely.

Q And then you made a comment which I did not understand. You said, and I am quoting, "I'm afraid a lot of gynecologists have other surgical interests in mind." What did you mean by that? You said that not enough doctors really paid attention to the psychological aspects and then you said, "I'm afraid a lot of gynecologists have other surgical interests in mind." What did you mean by that?

A I think I meant —

Q Do you recall saying that?

A I am sure I did if you have got me quoted. I don't remember it. I think I meant that many gynecologists are not very apt to spend much time in the office dealing with purely emotional affairs dealing with the reproductive tract.

[29] Q What are these other surgical interests you had in mind that these doctors might have?

A Well, I think, of course, a hysterectomy is one. Perhaps it is not too often, but a hysterectomy is a usual procedure for a doctor to do.

Q Doctor, I just happened to be reading the Boston Globe of December 4, 1974, and the paper reports a study of gynecologists, and it was done by a gynecologist who toured various hospitals, and he was concerned with tubal ligations and the performance of this procedure, and he indicated that what he termed a significant minority of residents and interns at teaching hospitals were performing these operations un-

necessarily and they were doing so because of a deep-seated personal belief regarding overpopulation and what their particular physician regarded as an ideal number of children for any family.

He also indicated these procedures were being performed because of frustration over the millions of dollars spent to support the welfare program.

In your experience, have you become aware of doctors that perform operations for these reasons?

MR. LUCAS: Let me object to that and particularly the use of a newspaper because it lacks any foundation. It is certainly not a scholarly treatise, although it is a good newspaper. I think the question is very [30] ambiguous. It has two or three elements to it.

JUDGE ALDRICH: It seems to me the question could have been put in much simpler language. To that extent, I will sustain the objection. You could have asked him all that without making a speech. I strike the question.

Q Doctor, in your experience, are you aware of physicians, and particularly gynecologists and obstetricians, who perform — well, we will leave it at gynecologists, who perform surgical operations based on personal beliefs, such as aversion to welfare, population control and their conception of what an ideal family size is?

MR. LUCAS: Objection. That question has too many factors in it.

JUDGE ALDRICH: He may answer.

A I don't think any doctor should perform operations for these other issues. We are taught and trained that what we are trying to do is to take care of the health of the patient.

Q Doctor, I did not ask you that. I asked you if you are aware of doctors, either from your own experience or from reading the literature, who, in fact, do that?

A I certainly am aware of all sorts of doctors who are not following the code.

Q And these are the doctors you would have make the decision for the minor on whether to have an abortion?

[31] A Oh, no, not at all. The same group of doctors who would do a hysterectomy without any medical reason for doing it, these are doctors who are not following the training and beliefs and code of ethics that they were brought up to follow.

Q If a patient is encountering a doctor for the first time, that patient is not going to know whether the doctor is one of these doctors you have said is violating the code or one who is perhaps following the code, is she?

A I think she is if she is going to a hospital or a clinic. She is going to trust the organization that she went to.

Q And that trust could be misplaced if the doctor is the wrong kind of doctor who is going to violate the code; is that right? Yes or no?

A I don't know, I guess.

Q You guess?

A Well, would you say that again? It is so clearly obvious — are you saying if she knows she is going to a criminal, would she have trust?

Q She is dependent really upon the doctor, isn't she? She doesn't know. The doctor is not going to have that on the office shingle that he is violating the code, is he?

A Not a criminal doctor.

Q So she is taking a chance?

A If she goes to an illegal abortionist, she is taking a [32] chance, yes.

JUDGE ALDRICH: I think you have gone far enough in arguing your case.

Q Is an abortion properly characterized as a surgical procedure in your judgment?

A Yes.

Q In your judgment is it good medical practice to begin starting the patient on antibiotics immediately preceding an abortion?

MR. LUCAS: Objection as to the details of a particular medical practice. I think the Supreme Court made it clear that the particular practice of the physician in the first trimester is a matter between the physician and the patient. While there may be disagreement over when and at what point to use antibiotics, I don't think it is a proper line of inquiry having to do with the rights of minors.

JUDGE ALDRICH: Do you want to make the same argument there? A girl might go to a crook the way a grownup might go to a crook?

MR. BEHAR: That is part of it, Your Honor.

JUDGE ALDRICH: What else?

MR. BEHAR: Well, in our view, there are different medical procedures that are being utilized. It seems to me that when you have a minor who shows up at a clinic, she is not going to be asking questions.

[33] JUDGE ALDRICH: We will hear that argument when we come to it, but I don't see what you are gaining now except wasting time.

MR. BEHAR: Are you overruling the question?

JUDGE ALDRICH: Yes, because it is argumentative.

MR. BEHAR: Note my objection.

Q In your experience, Doctor, has it ever been necessary for a physician to consult with a minor's family doctor before performing an abortion?

A Indeed, the family doctor may be a very excellent person to talk to, as I have suggested, particularly if the child refuses to involve the parents. I think I mentioned some trained person, even a minister, and the family doctor might be someone we might call in.

Q Would you have occasion to consult a family doctor for medical reasons relative to a minor?

A I think in our clinic anyway we try to see that the client goes back to her family doctor after the procedure if she possibly can. We feel that this is a very good way to follow up.

Q Your experience has been in situations where you have parents present or at least one parent present.

A One parent's consent, yes.

Q During these consultations has it been your experience that [34] a parent is ever able to supply knowledge relative to a minor's medical history that the minor does not have?

A I don't think anything that would be appropriate to the situation. In other words, the fact that the child had chicken pox or something like that is not pertinent.

Q Has a parent ever amplified the history of the child?

A If you know parents, then you know how they talk. Most of it is irrelevant to the problem.

Q But they have provided information in situations where the minor has not been able to?

A Of no significance to the decision, yes.

Q Doctor, do you encounter the situation in your clinical experience, and maybe in your training, where a minor has articulated a fear of involving her parents, and the parents are then informed of her pregnancy, and the fear is not realized?

A I do not happen to remember that particular situation, but I can think of many other situations that would seem to follow the same pattern.

Q In other words, not all the minor's fears come true, is that right?

A Indeed, no, that is true.

Q In fact, on direct testimony you stated, "Often enough the young person is possibly wrong for not wanting to inform her parents"?

[35] A It can happen.

Q Relative to the hospitals and clinics you have been associated with, have they ever had occasion to make referrals to state agencies regarding families they did not regard as suitable for a child?

A For the care of the child?

Q Yes, for the care of the child.

A After an abortion?

Q I mean in general.

A In general, most hospitals have social service departments that are very closely affiliated with state agencies.

Q And in these situations, and oftentimes as a result of hospital intervention, there can be a guardian appointed for a particular minor?

A For a child without —

MR. LUCAS: I object to the relevancy.

JUDGE ALDRICH: You may go ahead.

Q In a situation where that is the case, where, for example, in a situation you posed as being an instance where you did not think it was a good idea for the parents to be informed, that is a retarded mother and an alcoholic father, that would be the kind of a situation where a guardian would be appointed?

A Correct.

Q Do you understand the statute in that situation to require [36] dealing with the guardian or with the parents?

A I don't know the statute. We have had cases just like that, with an older sister —

Q I think you have answered the question. In your view, Doctor, are there any surgical procedures which, in your judgement, a 17 year old can not give an informed consent to?

A Indeed, in my experience and affiliation in hospitals in this town, those procedures that need a total anesthetic, putting the child out with some sort of an anesthetic, all these procedures need some adult consent. I don't know that there

is any law about this, but this is the policy as far as I know. Of course, abortions done under novocain are out of that range.

Q Well, are you saying it is good medical practice to have parental involvement in all situations where there is a general anesthetic?

A Yes, a guardian or parent surrogate, yes.

Q Are there any general procedures not involving a general anesthetic that in your view a 17 year old, for example, could not give an informed consent to?

A I don't know. I would have to think about that. I'm not sure that there are.

Q Is it your view that a 17 year old can give an informed consent to a tubal ligation?

[37] A I think that indeed she could be capable. Let's say older adolescents, rather than age, would be able to give an informed consent.

Q What about the younger adolescents?

A There again, it depends on the child, doesn't it?

Q Well, for the younger adolescent what did you say that as a class younger adolescents could not give an informed consent to a tubal ligation?

A As a class — I would think that tubal ligation is something we do not do for young adolescents. It is wholly out of my medical experience to even consider doing a tubal ligation under a local.

Q I am talking about the ability to appreciate the procedure, whether it should be done or not. Is it your judgment that younger adolescents as a class could give informed consent to that procedure?

A No better than they could a hysterectomy, which is not done. We do not challenge them with the necessity to decide these types of operations. These are elective operations. One

does not even bring them into the problem of the younger adolescent.

Q In your medical experience is sterility a possible consequence of an abortion?

A Oh, no.

Q You would not say that?

[38] A Oh, no, certainly not.

Q If it is done badly?

A Well, if you get an infection, I suppose, this complication, which is rare, I suppose this might have some bearing on some possible sterility, but in general that is not the case.

Q It is not?

A It is very rare.

Q It is very rare?

A Right.

Q Well, in a situation where it is rare and that consequence exists, are you saying younger adolescents as a class can nonetheless consent to a procedure where that is a very real consequence?

A Of course. That is something one talks about when one talks to an adolescent beforehand or the surrogate.

Q Doctor, do you have personal views relative to State regulation of abortion?

A To the State regulation of abortion?

Q Yes.

A Could you help me as to what you mean by State regulation?

Q State statutes that govern the particular procedure.

A As I said before, I feel that that decision has to be a medical decision, that no legislator in the State House [39] can decide whether this particular individual carries a greater risk in carrying through the pregnancy than the minor risk in abortion. I don't see how a law can make this decision. It must be the physician's challenge.

MR. BEHAR: I have no further questions.

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CROSS-EXAMINATION BY MR. REYNOLDS

Q Doctor —

MR. LUCAS: We have not been able to find any appearance for Mr. Reynolds in the record. He has not signed any of the pleadings. I would like that clarified.

MR. REYNOLDS: I think the docket will show that my appearance is in. I met my brother on the occasion of taking a deposition.

JUDGE ALDRICH: Well, if you haven't, then it can be rectified later.

MR. REYNOLDS: Thank you, Your Honor.

Q (By Mr. Reynolds) Good morning, Dr. Sturgis. I am referring, Dr. Sturgis, to what has been marked here as Exhibit 4, which you identified as a statement submitted to the Executive Board of the A.C.O.G. You participated, as I understand it, in the formulation of this document; is that so?

A Correct.

Q The only date I see on the document is April of 1972. [40] Was the document submitted to the Executive Board at or about that particular time?

A I would guess so.

Q Has the Executive Committee passed in any way upon the document which was submitted for their consideration?

A They passed on it in this way, by giving it to their publication to be published in the bulletin. Whether it was the next one or not I'm not sure, but that was their action involved, if you wish, or approval of the Committee.

Q It is your understanding they did approve it?

A They approved of publishing it in the bulletin. As far as I know, the next A.C.O.G. Executive Committee meeting would have been in the spring of the next year.

Q You do not actually know whether they have accepted this as a statement that they want to put out as a position by the College?

A That is correct. I think I made that clear.

Q Doctor, at the time this was formulated, you were talking about minors, you were talking about those who were age 18, 19 and 20; isn't that so?

A I don't recall. Did we say the ages?

Q I don't see any place —

A Indeed, I do remember. We very carefully did not identify the minor by age because we got into a huge hassle in the Committee that you could not say 15 was [41] different from 14 or 17.

Q As part of your common knowledge, you knew at the time you composed this paper that when you used the term minors you were talking about people below the age of 21; is that so?

A Yes.

Q Since that time, you know there has been a change in the legislation here in the Commonwealth of Massachusetts?

A Yes.

Q There has been indeed a change in many places across the land?

A Right.

Q And people age 18, 19 and 20 are no longer considered minors, are they?

A That is correct.

Q You do mention teenagers in this report, do you not?

A Yes.

Q It is correct that when you were formulating your opinions here, you were particularly concerned with an-

nouncing what you considered to be the rights of people age 18, 19 and 20? They were more affected by what you were saying than any other single group?

A That what I am saying here in this court —

Q Yes.

A I don't think we ever considered that, sir, because [42] I was quite aware that you had to be under 18 these days to be considered a minor.

Q At the time you wrote this, it was not 18?

A At the time we wrote this they were included as minors.

Q Didn't you take into account those young women who were age 18, 19 and 20 specifically?

A They were included, although they were not —

Q Thank you very much, Doctor. That answers the question.

Now, you say that in your practice, those that you are associated with, it is part of your regular procedure to obtain the consent — and I assume that is written consent of one parent, is that so?

A Yes.

Q You have no particular quarrel with obtaining the consent of one parent, do you?

A No.

Q As a matter of fact, you said, I think, in the vast majority of cases you do obtain the consent of one parent; isn't that so?

A It happens to be so in our clinic, yes.

Q So far as you know, that is the generally accepted medical practice here in the Commonwealth, isn't it?

A I am not sure about that today because we set out policy before the Supreme Court decision.

[43] Q I'm asking you, sir, about your knowledge of the general medical practice here in the Commonwealth.

A I really haven't that much knowledge to give you.

Q There was one question about your affiliation, and you said you were associated with a local university clinic. By that you meant some clinic here in Suffolk County?

A No. It was a university health agency. I suppose you could call it a clinic.

Q Physically located in Suffolk County?

A No, across the river.

Q If it is across the river, it is over in Middlesex County?

A Right.

Q With regard to surgical procedures on young women under the age of 18, other than an abortion — I am not talking about an abortion — you must, I assume, in your practice perform some surgical procedures on young women under that age other than abortions, isn't that so?

A Under local anesthesia, yes.

Q Isn't it true that in your practice you obtain a written consent of a parent for that?

A Oh, I don't think so. I can think of a paronychia fingernail, or minor things.

Q Anything more significant than that?

A Even more significant than that, in the case of the university health center that you mentioned that I work in [44] many times a boil or something else has to be operated on and the parents are on the other side of the continent.

Q And you can't get in touch with them?

A Yes, and you go ahead.

Q That would be an emergency procedure?

A Absolutely.

Q And it is relatively simple?

A Under local anesthesia. We would not if it were general anesthesia.

Q In your practice isn't it so that hospitals in this area do not remove tonsils or do not remove an appendix without the written consent of a parent?

A Neither of those can be done under local anesthesia.

Q You do get the consent of a parent in those cases?

A Of course, because they need general anesthesia.

Q And whether it is because of that or not, you do, in fact, get consent; isn't that so?

A It goes with what I said. Any general anesthetic has the consent of one parent.

Q Do you know of any situation where, other than where a general anesthetic is used, it is not the customary procedure to get the written consent of the parents?

A Let me see. The procedure that is —

Q A surgical procedure.

A A local procedure that does not need a parent's [45] consent?

Q I am talking about the accepted medical practice as you know it.

A Would you give me another chance? Would you state it again?

Q Surely. I am talking about general medical practice as you know it, and I am talking about situations in which a general anesthetic is not required. I am asking in those circumstances isn't it the case that doctors and hospitals you know of as a regular medical practice obtain the written consent of a parent?

A No. I think frequently — at the Massachusetts General where I worked for some time, oral consent over the telephone was acceptable.

Q Oral consent over the phone?

A Yes.

Q But there is some communication with the parents or there is at least an attempt?

A Well, if it was infected fingernail, I doubt it. It depends on the severity of the surgery.

Q In your paper you refer to the time when the patient is responsibly mature and adamant about not involving her parents. I am zeroing in on this "responsibly mature". You mean by responsibly mature a financial consideration, do you not, Doctor?

[46] A No. The married minor generally is considered responsibly mature. Whether or not she is in the poverty group, she is able to make a decision by law.

Q So you are talking about a female who is married and below age 18. And would you call that person an emancipated female?

A Yes.

Q Other than the emancipated female, a young woman who is married below the age of 18, are you talking about anybody else when you describe them as responsibly mature?

A Yes, because the marriage license really may not have anything to do with your decision as to whether or not she is an emancipated minor.

MR. REYNOLDS: I move that go out, Your Honor. It is not responsive.

JUDGE ALDRICH: I couldn't even hear what your question was.

MR. REYNOLDS: I'm sorry it wasn't heard. I would like it to be heard. May I ask that the court reporter read it back?

JUDGE ALDRICH: Yes.

(The question is read.)

JUDGE ALDRICH: I think you can rephrase that a lot simpler.

Q Doctor, I would like you to keep in mind for the purpose of [47] this question that girls who are married are out of the question.

I am asking you in consideration of your committee, when you used the term "reponsibly mature", who were you talking about? What group of people?

A We were talking about the minor child again.

Q Did you put any parameters on the minor child in your own group?

A Any age?

Q Well, whatever parameters you put on.

A We were talking about the youngster who seems to be adult in her development.

Q No consideration at all as to whether they were age 11 or 22?

A Well, Mr. Reynolds, there are 22 year olds who are retarded as much as 11 year olds. You can not say that age makes a difference.

JUDGE FREEDMAN: Well, someone 22 is not a minor.

THE WITNESS: That is correct.

Q You said in your report of the committee that you were seeking to establish useful guidelines for physicians, and that you had in mind helping your patient as well as the physician and the patient and her parents. What kind of things did you have in mind that would be helpful to the patient and her [48] parents in their relationship to the child?

A I think what we have commented before, that is, that if the parent can be brought in to support the child in the decision, that may be helpful to them both.

Q And, as a matter of fact, you said not only would it or might it be helpful, but you considered that to be helpful in every situation or very nearly so; isn't that the case?

A I can imagine it would be.

Q Doctor, you have said that abortion is a surgical procedure. Would you agree that it is an elective surgical procedure?

A Indeed, yes.

Q In the first trimester abortion situation, in the vast majority of cases presented to you, they are not emergency cases, are they?

A I would not say that because in our clinic we are getting probably 30% in the over the ten weeks duration.

Q Over 30% are over ten weeks?

A Yes.

Q So that 70% are under ten weeks?

A Probably.

Q In the case of those 70%, whether you perform the abortion today or tomorrow or Thursday, it is not going to make any significant difference, is it?

A Not within days, but within weeks, yes.

Q Within a week?

[49] A I'm sorry. Is that a question?

Q Yes, sir.

A I didn't hear it.

Q You said, as I understand it, that you should not go into a period of weeks waiting on this, but you can wait a matter of days.

A A day or two.

Q Would 72 hours be too much?

A The earlier it is done, the easier it is to do. You know that.

Q No, sir, I do not. If somebody presents herself to you and she is six to eight weeks pregnant, it doesn't really matter from the standpoint of morbidity or mortality or risk of any form whether that is performed today or a week from now?

A It is a little easier the earlier it is done.

Q It is easier, but there is no substantial increase in the risk factor, is there?

A Not substantial for a week difference.

Q Do you know of any statistics that support any increase in the risk factor?

A There is a gradual increasing risk involved as the extent of the pregnancy is increased.

Q But on or about the time the first trimester has passed, before that time, that is considered a particularly safe area for the performance of an abortion, isn't that true?

[50] A It is safer than after the first trimester.

Q Doctor, you said in your statement, Exhibit 4, that the people who participated in the preparation of the statement were a committee of physicians and some behavioral scientists, and a legal consultant. Would you identify for us, please, who the legal consultant was that participated in this preparation?

A I'm sorry. I do not have the list. I did not bring with me the list of the Committee. I believe it was someone from the American College of OB/GYN.

Q Maryland College?

A No, American College of Obstetrics and Gynecology. I don't remember the names.

Q How many served on this committee?

A About nine, I think, were on the committee.

Q How many of them were physicians?

A Approximately four, I think. The others were behavioral scientists, Ph.D.'s in behavioral science, and we had one or two social workers also who were Ph.D. people and we had a nurse or two.

Q Several times in the paper you mentioned the modification in the law with respect to the treatment of those who have drug abuse and that minors can now be treated for that.

A Without parental consent.

Q Without parental consent. You are aware, Doctor, that in [51] those cases the financial responsibility of a parent is removed?

A Surely.

Q You know that?

A This state and other states probably also provide this service free.

Q In other words, under our statutes, when somebody is found to be drug addicted, that determination requires a joint determination by at least two physicians. That is one thing, isn't it?

A I am glad to know that. I don't know the wording of the statute exactly. I would assume the physician would try to get a parent in, just the same as for an abortion.

Q I am talking about a specific statute. In that particular framework, that particular area, that problem area, where you have drug abuse, a minor is prohibited from rescinding a contract. Did you know that?

A No.

Q Are you aware of the fact minors in the Commonwealth have the privilege of rescinding a contract?

MR. LUCAS: Objection to that. That is a legal question. In the few cases we have run into, if medical treatment was a necessity, a minor can contract. He is asking a question that is improper because its foundation would not stand up under Massachusetts law.

[52] JUDGE ALDRICH: It seems to me that all you are calling for is the knowledge of the witness. To what extent it may be relevant remains to be seen. He may answer.

A I am so naive legally. I don't know what rescinding what contract refers to. I'm sorry.

Q In other words, the ability of a minor to walk away from a contract she has made.

A What contract she has made?

Q Any contract, a contract to have —

JUDGE ALDRICH: Counsel, I think you are getting far afield. If you have something in mind, ask it.

MR. REYNOLDS: Yes, sir, I am asking about the statute that deals with drug abuse.

JUDGE ALDRICH: And the relevancy escapes me. If you want to ask him something about the statute, go ahead.

Q With regard to Chapter 112, Section 12P, which is what we are talking about here, there is no provision for a minor to rescind this contract, is there?

A This is a legal term. I don't know what you are talking about. I'm sorry. Rescinding a contract has to be defined.

JUDGE ALDRICH: It seems to me that this is a question that could be put in much simpler language. [53] Both you and your predecessor, if I may say so, have to make a speech before they ask a question.

MR. REYNOLDS: I'm sorry, Your Honor. I did not mean to do that.

Q In your paper you present the conclusion that there are three particular serious problems coming out of early sexual activity and that those problems affected the individual and society. Isn't that so?

A Yes.

Q And you meant by society — you had in mind the town in which the girl lives, the community and the state, indeed?

A I presume the community would probably be it.

Q How did you conceive society was affected?

A That the community was affected?

Q Well, society.

A I am just looking at my paragraph here.

Q Page 2.

A Page 2, yes. Of course, it is perfectly clear that what we were talking about was the possibility of venereal disease increasing by early sexual experience and that this was clearly a community hazard of difficulty, the emotional stress and trauma.

Q I gather you support the State's interest and legislation with respect to the treatment of venereal disease?

A The State is very helpful, but parental consent is not [54] required, of course.

Q Later on in your paper you suggest that when a troubled child comes to you and says she has this difficulty or she is pregnant and wants to be aborted and she doesn't want you to tell her parents, you said oftentimes what she really wants is for you to tell her parents, for the physician to tell her parents; is that so?

A If she will give permission, that would be what I would do, yes.

Q Your paper suggests that that is a real situation, that physicians are not often asked to keep a confidence, and as they explore it they found that really what the patient wants is for the doctor to make the call to let the parents know.

A This can be one of the difficult things for a doctor to try to keep in mind.

Q Has that happened to you in your own practice?

A I can't give you chapter and verse, but I imagine so.

Q You would have no objection to playing the part of the kindly informant to the parents, would you?

A I wouldn't do it if the child —

Q I am saying if you determined her position was that actually she was asking you to make the information known.

A I wouldn't have the competence myself in knowing that to be the case.

[55] Q Now, you have on Page 5 a situation where when the physician judges that the girl who refuses to tell her parents is incapable of making a considered decision — it begins that way — you are saying that you do run into those who are incapable of a decision up or down; isn't that correct?

A Of course.

Q And you are saying that in that kind of situation your view of the proper way to handle it is for the physician to step in and to make a decision as to which way — which is best done medically to treat this patient.

A That is not what is said here. The physician should carefully select a medical colleague, a fully qualified and responsible member, and so on, to share his decision.

Q Right. You would make a decision which is your opinion best for the girl who is incapable of a decision, and you would get support from a colleague with regard to the decision that you would make?

A That is what I would recommend.

Q You might take a medical colleague or —

A — a social worker or a clergyman, or whoever.

Q How about a lawyer?

A A lawyer, if he was competent, in my opinion, to deal with this situation.

Q When that kind of decision comes about, do you have in mind the ramifications of the financial aspects of such a [56] decision?

A Well, of course that must come into it.

Q Would it be your view that the physician would make the decision in favor of the abortion, if a child is incapable of a decision, and that the physician ought to shoulder the financial burden?

A I don't think that follows. I think it is mentioned here that appropriate action might be to bring in a social agency, a family counselor or youth counseling service.

Q Suppose in that situation that the family is perfectly capable of paying for the procedure?

A Well, I think that is one of the aspects that should not interfere in the physician's decision as to the medical care of his patient.

Q And because you have a girl who is in your estimation incapable of a decision, your view is that you should nonetheless maintain her confidence and not discuss the condition with her parents?

A Here again, I would want to talk this over with someone else.

Q The party who makes that decision then makes the decision as to whom he would discuss the matter with?

A The physician makes that decision.

Q Would there be any record kept in your view of that?

A Probably. It may well be that the counselor — let's [57] say the girl is mentally incapable of making a decision. It may be that the counselor or the psychologist, or whoever it is, would say, "We have to tell the parents." This would be the decision to be made by them.

Q Let me present this situation to you. You have a girl who is in your view incapable of a decision and she has asked you to keep her confidence, and she is the daughter of a physician. Would that change your mind?

A Well, it would make it very difficult. I would think I would want to get somebody else in on this situation.

Q Is there anything you know of in your practice as a physician which would require the sanctity of confidentiality between the doctor and his youthful patient?

A That would require that to violate that confidence?

Q Yes.

A I would think the incompetent patient, the mentally retarded patient of a degree unable to make an informed consent, would be one of those where one would have to violate, let's say, the confidentiality involved.

Q Is there any code in medicine that says in those circumstances a doctor is obliged to keep a confidence?

A It comes in the Hippocratic oath. I can not quote it exactly, but "he shall not give his patient's confidence." It has been quite a while since I took the oath.

Q Is there anything in the Hippocratic oath with regard to the [58] surgical procedure of aborting or abortion?

A Yes, I think so.

Q Does it prohibit it?

A I can't quote it, but in those days, it was considered probably a moral situation to abort a woman.

MR. LUCAS: This is discussed fully in the Supreme Court decision, the Hippocratic oath.

MR. REYNOLDS: Thank you. I have no further questions.

MR. LUCAS: I will try to keep the re-direct very brief.

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RE-DIRECT EXAMINATION BY MR. LUCAS

Q Doctor, I believe you testified that at the clinic you are associated with they require the consent of one parent normally?

A Yes.

Q Would it complicate matters to require the consent of both parents?

A Yes.

Q In what way would this complicate matters?

A Too often the parents may not be living at the same place. Too often the parents may be in conflict, where the child is closely related to one parent but not the other, and when to insist on telling the other parent may serve [59] to cause considerable marital conflict.

Q In your experience in dealing with minors, how many of the parents are trained gynecologists?

A Very few.

Q How many are trained psychiatrists?

A Parents?

Q Yes.

A Very few.

Q Do many of them have any training in counseling or dealing with the problems of minors?

A Generally not.

Q Do you have any knowledge of the number of patients who call the clinic you are associated with to find out about the parental consent requirement and then go elsewhere?

A That might be a good many. We only —

MR. REYNOLDS: Objection. I don't think it is responsive. May I have the question and answer read?

JUDGE ALDRICH: Yes.

(The question and answer is read.)

MR. REYNOLDS: I defer to Mr. Duffey. That is not what I heard.

JUDGE ALDRICH: Go ahead, Doctor.

THE WITNESS: Yes, I am sure there are a good many. I can't give you the numbers though.

[60] Q I believe you testified an abortion was considered as a surgical procedure. It is considered a minor surgical procedure or a major surgical procedure?

A Minor procedure.

Q Is it one of the most minor surgical procedures in the ACOG characterization of surgical procedure?

A That is correct.

MR. REYNOLDS: I object. He is leading the witness with regard to that.

JUDGE ALDRICH: It is leading.

Q Do minors ever seek out tubal ligations?

A No. I have never known any minors to ask for this.

Q Have you ever known of a minor to seek a hysterectomy?

A No.

Q Does the delay of a week for a minor who is pregnant affect her emotional condition at all? Does it increase or decrease anxiety?

A I think it obviously does. Most minors find the waiting period even of a day or two or three a period of extreme stress. In the minor, the underdeveloped minor, this is a very difficult time for them to go through from a mental point of view.

Q There were some questions asked you concerning an agreement with local hospitals. Is it your experience that emergency rooms accept persons coming there with [61] emergencies with or without a written agreement?

A Indeed, yes. We have had a few complications. They have been taken care of by a hospital that has no written agreement with our clinic.

Q Is abortion sometimes characterized as a medical as opposed to a surgical procedure?

A Medical rather than surgical?

Q Yes.

A There are being developed medical ways of carrying out an abortion, but they are not generally done now.

Q Does a first trimester vacuum abortion involve any cutting on the patient at all?

A No.

Q Have you had any experience, other than with counselors, paramedical personnel, being utilized in abortion clinics?

A I have had no personal experience.

Q Do you know of any instances of family doctors informing parents of a pregnancy when the minor did not want the parents to be informed and breaching their confidence?

A I am sure that could happen. I don't know of any specific time but I could imagine that it could happen.

MR. LUCAS: I have no further questions. Thank you very much.

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[62] RE-CROSS EXAMINATION BY MR. BEHAR

Q I just have a few questions. What is it, Doctor, about general anesthesia that requires parental consent?

A It is that general anesthesia involves a whole lot of new and much more severe risk to the patient, no matter for what it is done, even if it is done for a minor tonsillectomy, still the knocking out of the conscious and the complications of general anesthesia demands consent.

Q Well, the fact that anesthesia is a consideration — that does not go to the ability of the patient to understand what is going on, does it?

A No.

Q The fact that you are using anesthesia has absolutely nothing to do with the ability, emotionally or intellectually, of the patient to understand what is going to happen to him or her?

A Would you characterize what you mean by anesthesia, whether general or local anesthesia?

Q I am talking about general anesthesia. The fact that general anesthesia is being used does not really relate to the ability — or are you saying that it does not relate to the ability of the patient to understand emotionally and intellectually what is about to happen to him or her?

A I think the answer to your question is it does not make any difference.

[63] Q Well, the mere fact a surgical procedure involves general anesthesia, that does not require or that should not be the determining factor whether the parents should be involved?

A Well, it is the determining factor, Mr. Behar. If a general anesthesia is going to be used, then it is necessary to have the parents' consent.

Q Is there something about the use of general anesthesia that makes it impossible for a minor to understand what the procedure is all about?

A Oh, no.

Q So it is just arbitrarily done this way?

A The parental consent for general anesthesia has been developed over the years, I suppose, as a policy, for hospitals, and so on, to insist on this.

Q In the situation where you have a minor who can not make up her mind, and that is the situation you treat in your statement, it is going to take some time to counsel that minor, isn't it?

A It may take some time.

Q It may take a few days?

A Probably not, no.

Q You could just reach a decision right off the bat?

A No. I think you could probably find a counselor readily available to come in that day and help the child make up her mind.

[64] Q You don't think it is a good idea to have the minor think it over?

A Well, it may be an hour or two hours or it may be a day.

Q And there would be delay in that situation?

A We have already covered the delay situation.

Q The delay is going to be beneficial to the minor in that situation because it is going to give her a chance to think things out?

A I think also, as I said before, it is an agonizing situation if there is delay.

Q Does dilation and curettage involve cutting of the patient?

A No.

MR. BEHAR: I have no further questions.

MR. REYNOLDS: No questions.

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RE-DIRECT EXAMINATION BY MR. LUCAS

Q When you have minors coming in that have the parents' consent, under 18, do you find the minors themselves understand the procedure and give an informed consent?

A I think in general, yes.

Q So they could give an informed consent with or without their parents?

A Indeed. Mostly that is the case.

MR. LUCAS: Thank you.

[65] JUDGE ALDRICH: We will take a short recess.

(Recess)

MR. BEHAR: Dr. Hodgson, please.

MR. RILEY: Your Honor, is it permissible for the members of the Massachusetts Bar to sit within the bar enclosure?

JUDGE ALDRICH: Yes.

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JANE E. HODGSON (RECALLED) CROSS-EXAMINATION BY MR. BEHAR

Q Would you restate your name for the record?

A Jane E. Hodgson.

Q Where do you live?

A 1537 North Fisk Street, St. Paul, Minnesota.

Q You indicated that you were associated with Pre-Term, Washington?

A Right.

Q What years were your association?

A From March of 1972 to December of 1973.

Q Were you paid a salary by Pre-Term?

A Yes.

Q Are babies delivered there?

A No.

Q Was your association with Pre-Term following the court case in Minnesota that your attorney referred to at the [66] earlier hearing?

A Yes.

Q You indicated that you are a counselor with two free-standing clinics in Massachusetts; is that correct?

A Yes.

JUDGE JULIAN: What kind of clinics?

JUDGE BEHAR: Free-standing clinics?

JUDGE JULIAN: Do we have a definition?

MR. BEHAR: I believe it is just a term that is used to show it is independent of a hospital. There are some clinics associated with a hospital.

JUDGE JULIAN: Very well.

Q Do you have any objection to identifying them for the record?

A I don't know of any reason. Pre-Term of Boston and Charles Circle Clinic.

Q These are both licensed by Massachusetts?

A Yes.

Q Were you paid a salary for your consulting work?

A Yes.

Q During the time that you left Minnesota, your sole source of income was with clinics that performed abortions?

A Well, no, not entirely.

Q Could you amplify?

A I had a private practice for 25 years prior to leaving Minnesota and obviously some of my income still came from [67] my private practice.

Q But the current work you were doing was solely in the clinic connection:

A That is right.

Q Do you know what an abortion center is?

A No, I don't believe I do.

Q When you use the term abortion, which trimester of pregnancy do you refer to?

A I usually specify first or second trimester.

Q Your attorney asked you a number of questions and you used just the word abortion when you responded to those questions.

A Well, the majority of abortions are first trimester. If there is any reason to specify, I would do so.

Q Were the various opinions you gave this Court at the prior hearing limited solely to first trimester abortions?

A If I did not specify, they would be, yes.

Q Thank you. You indicated that you have had experience —

A May I correct that?

Q Yes.

A When I am speaking of abortion in the broad sense, it may well have included mid trimester also in discussing abortion as an issue. I think it would depend entirely on my usage, on the particular sentence. I might have used abortion in a general sense and neglected to have specified both first and second trimester.

[68] Q But generally when you used the term you were referring to first trimester?

A I would say generally, yes.

Q You indicated that you had experience and training in both the medical and psychological aspects of abortion; is that correct?

A Yes.

Q What medical aspects are involved in this training?

A Well, that is rather lengthy. I don't know how much detail you want me to go into. There are books written on it. There are many, many aspects. It takes weeks, actually, of training a physician in not only the technical aspects, the indications for the procedure, the complications, the pre and post-op care, the use of the equipment.

Q Regarding the complications, what are among the ones you focus on in this training?

A The medical complications are really surprisingly few. Most of the complications of the abortion procedure, and I am referring to the first trimester, primarily are delayed in type. In other words, they do not occur until two or three days usually after the procedure. In a series of 10,000 which are recorded, and it just appeared last month in the American Journal of Obstetrics and Gynecology, we noticed the paucity of complications occurring in the first 24 hours. The common complications are hemorrhage, [69] infection and retention of tissue. The incidence of perforation is the only medical complication. That occurs on the average of less than one per thousand.

Q That was in your study?

A Right.

Q Isn't it a fact, Doctor, that there are other studies which indicate that those complications are very considerably higher?

A I don't think there are any that are a qualified study.

Q You, yourself, in the report you are talking about referred to an Australian study.

A That was the purpose of my writing the article — to refute the Australian study because it was so poorly done.

Q So your purpose in doing your study was —

A — to rectify the misinformation.

Q You would not want it though that an abortion was a complicated procedure, would you?

A I would like to have the medical profession know the truth about the abortion procedure because it is still a relatively new procedure and it is important that the scientific facts be assembled and be published.

Q You are not questioning the truth of the Australian study? You are not questioning the integrity of the people who made it, are you?

A Possibly.

Q Isn't it a fact, Doctor, that the reason for your study was [70] to further your own pro-abortion views and try to minimize the complications that attach to this procedure?

A No. I wanted to point out to the profession the hazards, and there are some, and the risks which really do exist. For example, if I may give you one, many of the regulations that were being set up were requiring the provision of blood facilities so that transfusions could be given to these girls, if necessary.

Well, our study revealed in 10,000 cases there were only three transfusions that were required and none of these were given during the first 24 hours, and a subsequent study, in which we reviewed 20,000 cases, pointed out the same fact, that it would be superfluous to require transfusion facilities in an out-patient clinic of this type because while it could occur, it was unlikely.

Q As to the complications, Doctor, you spoke of, do you regard these as being more likely in a younger woman?

A The risks are higher in the younger woman as a rule. May I add something to that?

Q I believe you have answered the question.

JUDGE ALDRICH: No, I don't think so.

A The risk of an abortion procedure increases with the parity of the woman regardless of her age. Parity is the number of pregnancies she has had. This is regardless of her age. That is one big factor. So that from that point [71] of view the young woman would have less risk.

However, the young, undeveloped uterus is harder to dilate. It is a harder procedure. The patients are perhaps not as cooperative. So that on the whole, the risks are higher.

Q Does the term morbidity mean anything to you in the context of abortion?

A Yes.

Q Does the term latent morbidity mean anything to you in the context of abortion?

A No. I don't know what you mean by that.

Q Would you explain what you mean by morbidity?

A Morbidity refers to infection, fever, the after-effects of a surgical procedure. Generally, it implies fever.

Q The complications that you spoke of, do any of those in your experience or from your own training and the literature, do any of those lead to sterility?

A No. They can, but very rarely, no more than a full-term pregnancy would.

Q But the risk is there?

A The risk is always there. Just living —

Q With regard to counseling, is there any special training that you imparted to the physicians you instructed?

A I hope that I did by example.

Q For example, did you recommend counseling be done [72] individually?

A It was done individually.

Q In your experience and training, would individual counseling be good medical practice as opposed to group counseling?

A It has been shown in recent studies that the teenage group responds better to group counseling because of peer pressure being so important in this age group.

Q You mean teenagers being counseled together?

A Yes.

Q You don't mean teenagers and adults?

A No, I mean teenagers. We did have an interesting study at Pre-Term, Washington. We tried to isolate groups of girls under 16 and they had both individual and group counseling and this was very effective.

Q You had both?

A We had both, right.

Q In your judgment, would it be good medical practice to have the group counseling done without any differentiation as to age, the wide spectrum of age?

A No. Women over 20 respond better to individual counseling. That has been shown fairly conclusively.

Q So in your judgment, it would be inappropriate to have a group of both minors and adults?

A Do you mean in the same group?

Q In the same group.

[73] A Yes. I think it would be quite appropriate.

Q You indicated, I believe, on direct examination that it is appropriate for the psychiatrist to play an active day-to-day role in clinic counseling; is that correct?

A It is desirable. It is not always practicable. There are not psychiatrists out in every little town all over the country, but if it is feasible, it is certainly desirable.

Q Why is it desirable?

A Because in any group of patients, you are going to have psychiatric problems where one needs more specialized help.

However, a very interesting study has just been published which shows that there is a higher group of psychiatric problems among the teenage pregnancies that elected to go ahead with their pregnancies than in the aborter group.

Q Yet there are psychological problems that existed in the aborter group?

A Yes. A comparison was recently made from Houston by Dr. Kane.

MR. BEHAR: I object to this.

JUDGE ALDRICH: All right, excluded.

Q In your judgment, should a pregnancy be terminated only for medical reasons?

A One would have to define medical reasons. By medical, if you include emotional, psychiatric, mental [74] well-being, I would say yes.

Q In other words, the mere fact that a woman or a minor is pregnant not in and of itself does not mean the pregnancy should be terminated?

MR. LUCAS: I object to this. This is foreclosed by the Supreme Court decision in Roe v. Wade.

JUDGE ALDRICH: You may answer.

A Obviously not. Many of these patients wish to continue their pregnancy and are encouraged to do so.

Q Is the situation now in medical practice that if a minor gives any reason for wanting to terminate the pregnancy, that is acceptable?

A That is the normal, healthy reaction of the average teenager. She doesn't want to be pregnant. This is essentially a normal type of reaction. The ones who want to continue the pregnancy are the ones that need the psychiatric help.

Q The ones that want —

A The young teenager — I am talking about a single teenager who has not planned a pregnancy, who used no contraception, and finds herself pregnant. The normal reaction is

one of wanting to eliminate that pregnancy as fast as possible.

Q A minor who wants to get pregnant often does, doesn't she?

A I think very, very few teenagers want to get pregnant.

[75] Q Well, a minor who will not use any form of contraception and proceeds to have intercourse oftentimes might unconsciously or for some other reason want to get pregnant? That experience in the literature is clear, isn't it?

A That was in the literature in the past, but the more recent psychiatric literature would indicate that most teenagers do not have a hidden unconscious motivation to get pregnant and where they do have, these are the ones that do need psychiatric help. That is what I am saying. The average teenager who gets pregnant and has not planned it or wilfully so desired, the reason usually is due to society's failure to provide sex education and contraceptive information.

Our permissive society — it is a multi-faceted thing, the teenager herself, particularly the young ones, are not wholly to blame. Society is to blame for this situation.

Q Doctor, regarding the situation that we are concerned with here, informing the parents of a pregnancy, you have indicated it is beneficial to the minor to have the parents involved in this situation?

A Yes.

Q Would you state to the Court what those benefits are?

A Parental support is extremely important in any moment of stress. This is certainly a period of stress for these youngsters. They need all the help they can get.

Q Suppose the minor does not want to tell her parents she is [76] pregnant. Is there any reason she might give that is acceptable to you for not telling the parents?

A I try very hard to persuade the patient.

Q Let me ask you this. Is there any reason a minor might give for not telling the parents that you would not find acceptable?

A I would have to stop and think about that. I would use every possible means to persuade that patient that her parents would be more receptive to the fact than she possibly believes at the time. This is the usual reaction.

Most of these patients want to spare their parents. They may have very great love for them and want to spare their feelings or they have a great sense of guilt over having had sex, and that is why they are trying to shield their parents.

Q Suppose a minor gives as a reason for not telling her parents that she doesn't want them to know she has had intercourse. Would that, in your view, be an appropriate reason?

A No, of course not. I try to explain to the child that —

Q If the minor has no real reason but just a general reluctance —

A Most do not have a real reason.

Q Where there is no real reason, that would not be appropriate?

A No.

[77] Q Let me ask you something else. In your experience have you run across situations where a minor is reluctant to tell a parent because of reason X, whatever that might be, but does in fact tell the parents reason X and the fear of the minor about telling does not come true?

A That is the usual situation, I would say.

Q That is fairly common?

A That is the run of the mill.

Q As a matter of fact, if the minor's reason was taken at face value and the parents were not involved, that minor and her family would have lost the benefit of parental involvement, wouldn't they?

A That's right, but —

Q I think you have answered the question.

A You can get around this business of parental consent by persuasion with the youngster, but it takes time oftentimes and there are a lot who get away, who do not come to the right source, and they obtain services elsewhere, and this manner of delaying the procedure, I think, is something that we have to educate the public to the importance of treating —

MR. BEHAR: I move that this go out, Your Honor.

JUDGE ALDRICH: We do not have a jury here. We will deal with whatever answer you get. The answer may [78] stand.

Q Doctor, in the situation we talked about where the parents are involved and the fears of the minor are not realized, that situation is far more common than the situation where it would be inappropriate in your medical judgment not to tell the parents at all?

A Very much more.

Q Doctor, is it your understanding of accepted medical-legal practice that courts frequently become involved in resolving disputes between parents and minors?

A Yes. It happens rather frequently, not in my own experience.

Q Would you regard it as acceptable medical practice for a doctor or clinic, for example, to agree to the price of an abortion with a minor and to agree to perform the operation on the basis of a ten-minute phone call?

A No.

Q In your judgment, should a doctor be present when a consent form is signed?

A No.

Q Do you think a doctor should review the consent form with the patient?

A Of course.

Q That goes without saying?

A He should know whether or not it has been signed, yes, [79] and know the patient's attitude.

Q Would you agree with Dr. Sturgis — by the way, you were present during his testimony, were you not?

A Yes.

Q Do you agree with Dr. Sturgis that some gynecologists have other surgical interests in mind relative to performing, say, an abortion or sterilization?

A Yes.

Q Thank you, Doctor. In talking about the risk of pregnancy, you indicated that the risks were greater for minors under 18; is that correct?

A Yes.

Q Isn't it a fact, Doctor, that pregnancy in late adolescence is as safe as pregnancies beyond?

A No, it is not.

Q Isn't it a fact that the experience in other countries where customs and what-have-you are different than ours adolescence is an ideal child-bearing age, if you know?

A I think you could find many figures to argue that point.

Q But it is the fact in your experience and from your reading of the literature that some countries regard adolescence, for example, as an ideal child-bearing age?

A What do you mean by adolescence?

Q Sixteen through eighteen.

A No. I would prefer having a patient 21, if I could [80] choose. I would rather deliver all women between 21 and 25 rather than under 21.

Q That is what you would rather do?

A Yes, with my knowledge of the field.

Q You realize there are other views than this?

A Oh, yes, I am sure.

Q In your experience, Doctor, have you ever known of an abortion to be disruptive of the family, an abortion performed on a minor to be disruptive of the family?

A The pregnancy would be disruptive.

Q What about the actual procedure? Suppose the minor elects to go through the route of not having the child but having the abortion. Have you ever known the fallout from that procedure to be disruptive of the parents?

A Of course.

Q You indicated that 12 and 13 year olds were more in need of parental support than, for example, 17 and 18 year olds. Is that correct?

A On the whole, yes.

Q Will you tell the Court the reasons why that is so?

A I think that would be obvious to the Court — immaturity.

Q It is not obvious to me.

A The 12 year old needs more financial and emotional support. Many are simply babies at that age.

[81] Q It is quite clear that there is a correlation between age and emotional and intellectual maturity?

A Obviously. May I add something to that? At this age of 12 and 13, this is the group that often want to keep their pregnancy because they have no idea what a full-term pregnancy and parental responsibility involves. This is the group where you do need psychiatric help and where you do have to have parental involvement, if possible.

Q A trained psychiatrist, I assume?

A Yes.

Q That would be clear in your view?

A Yes, in that age group.

Q Have you encountered minor females in the age group 12 through 17 who could not give an informed consent in your judgment?

A Yes.

Q You indicated on direct examination, I believe, that the availability of elective abortion was accepted by national med-

ical organizations in obstetrics and gynecology; is that correct?

A Yes.

Q The acceptance by these groups did not really treat the situation we are confronted with here, the minor's situation and parental consent?

A Yes, there is a recent statement by the Association of [82] Children's Hospitals — the minor giving her own consent to an abortion.

JUDGE JULIAN: Is that available to the public?

THE WITNESS: Yes. It was published in February of this year. I believe, Mr. Lucas, you have a copy.

MR. LUCAS: Yes. When we get to the re-direct, we will introduce it. We have a number of extra copies.

Q In your view, is an abortion properly characterized as a surgical procedure?

A Yes.

Q In your experience has it been necessary for a physician who is about to perform an abortion to consult a family doctor as to some aspects of the medical history of a minor?

A It is often very desirable.

Q In your experience, Doctor, have parents ever been able to supply medical background for a minor that the minor herself could not supply?

A Very, very rarely.

Q In your judgment, are there any surgical procedures that a 17 year old could not give an informed consent to?

A Sterilization.

Q You would say in that situation a 17 year old could not?

A I feel that way intuitively.

[83] Q Would that be an appreciation for the consequences?

A Yes, that's right. I don't think most 17 year olds know how they are going to feel about reproduction at the age of

30. There might be extenuating circumstances in which a 17 year old could make that decision, but I wouldn't want to do the procedure.

Q If a 17 year old came in and said, "I would like to have a tubal ligation because I just don't want to bring children into the world", you wouldn't think that judgment ought to be followed through?

A No, I wouldn't want to do it.

Q Doctor, you personally have very strong views pro-abortion, don't you?

A Yes.

Q And you also have strong personal feelings on the subject?

JUDGE ALDRICH: I didn't get the question.

Q You also have strong personal feelings on the subject, do you not?

A I guess most people would think so.

Q And those feelings are completely in favor of the procedure, are they not?

A I abhor the procedure. I look forward to the day when we can eliminate it completely, if that day ever comes, but it is the lesser of two evils in our society.

Q In your judgment?

[84] A In my judgment it is the lesser of two evils.

Q Have you been able, in giving the various opinions you have given to the Court, to separate out your personal feelings from your medical judgment?

A I don't think that is possible.

MR. BEHAR: I have no further questions.

JUDGE FREEDMAN: Based on the questions regarding your medical opinion and your personal feelings, I would ask the further question: Are your personal feelings based upon your medical experience and judgment?

THE WITNESS: Entirely. I had quite opposite opinions 25 years ago.

.

CROSS-EXAMINATION BY MR. REYNOLDS

Q Doctor, my recollection is you testified on direct examination to having supervised something on the order of 25,000 first trimester abortions of young women in the last two years?

A That is correct.

Q And approximately 11% of those were young women under the age of 18?

A Right.

Q Would that be about 12,500 each year?

A Well, perhaps, yes.

Q With regard to those young women under the age of 18, [85] in each instance you had received a parent's consent to perform the abortion; isn't that correct?

A The procedure was that the patient could bring in the parent's signature. There was no notarization of that signature. This policy was set up before I went to Washington, and there was no law on the books, no legal statute at that time, in the District of Columbia, requiring parental consent, and very recently a law has been passed eliminating the necessity for it.

Q During the time when you supervised these 25,000 abortions, and about 11% were under the age of 18, during that time a consent form, a written form, was required?

A Yes.

Q And whether or not they were actually signed by the parent, you don't know that?

A I doubt very much if they always were.

Q So as far as you know, there was no particular statutory requirement at that time?

A At that time, right.

Q But you wouldn't do it without the consent form being signed?

A Right.

Q Did you turn away any in that category, that is, under age 25, during that time for failure to obtain parental consent?

A We turned away a number every week, almost daily.

Q Let me ask you about those that were turned away. How [86] many within a week were turned away?

A I would estimate at least a dozen.

Q Did some of those return later on?

A Yes. Perhaps another dozen would be referred for psychiatric help or special counseling, but some of those came back. I can't tell you what percentage.

Q Based upon your own experience as a practicing physician, the vast amount of your practice with regard to abortions has included the requirement of parental consent?

A Yes.

Q You find that parental involvement in the decision is desirable?

A Right.

Q In your testimony you reported that some young women under the age of 18 did not have financial responsibility.

A I am sure there were.

Q Isn't it your experience that most, if not all, young women below the age of 18 are still in the process of acquiring an education?

A Yes.

Q And that most of those young women under the age of 18 who are not married make their home under their father's roof or mother's roof?

A Yes.

Q Isn't it so that you find there is a great capacity on the part of the parents who have a daughter in that group to be [87] understanding and to in fact be supportive and helpful?

A Yes.

Q You, yourself, are a mother of two daughters, as I recall your direct testimony.

A Yes.

Q One is a teenager?

A Yes.

Q As the mother of a teenager, you would, I assume, wish to be informed of any abortion decision she made?

A I would be, I am sure.

MR. REYNOLDS: Thank you, Doctor.

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RE-DIRECT EXAMINATION BY MR. LUCAS

Q Doctor, were most of your opinions on abortion formed at a time when abortion was illegal?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

Q At the time you formed your opinions, your pro-abortion opinions, you were not able to do abortions because they could not be done in medical practice?

MR. REYNOLDS: Objection.

MR. BEHAR: Objection. This witness has testified as to opinions, I assume, she holds today.

JUDGE ALDRICH: I think he is relating to the last two questions you asked on cross-examination. I don't [88] know why he can't bring out a time sequence on it.

Q When did you first form your opinions on the desirability of having elective abortions for minors?

A It is hard to pinpoint it. My feelings gradually evolved over the years by having been so frustrated in dealing with problem pregnancies of women of all ages, and I began to realize that our law was bad and that abortion services should be made available.

Q Was the issue of parental consent involved in the test case you brought in Minnesota?

A No.

Q Did you have anything to gain personally from eliminating the parental consent requirement?

A Nothing. It has never been a problem to me except it is a delaying factor. It is an impediment, one more impediment which may throw the teenager into the second trimester. that is my chief objection to it.

Q Has most of your experience at Pre-Term had to do with the requirement of one parent as opposed to two parents?

A Just one.

Q How would it affect the difficulty for the patient if you had to have the consent of both parents?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: That is the same set of [89] questions that has been asked on cross-examination. I consider the answer to both irrelevant — if not irrelevant for the case, irrelevant from the standpoint of the witness.

If that troubles you, Mr. Reynolds, it is harder to draw two aces in your poker hand than it is one.

Q Doctor Hodgson, if only one minor in the United States could not get parental consent, would that still interfere with obtaining an abortion?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: Excluded.

Q You indicated you have done some studying of the problem of psychological reaction to abortion versus delivery. Would you describe what your findings were on that subject?

A I was citing a work published recently from Houston by Dr. Kane, Chief of Psychiatry.

MR. BEHAR: I object. I believe the question was what she had found. Now we are dealing with some study she is referring to.

MR. LUCAS: The question had to do with her study of the literature.

JUDGE ALDRICH: Our problem may be answered in that respect because I think the defendants have asked both witnesses, and particularly this witness, about familiarity with the literature about a half dozen times. [90] You may proceed.

Q You may answer the question.

A This was a study of a group of teenagers who were pregnant. It compared the aborters with the non-aborters. It was interesting that the non-aborters, the girls that wished to carry their pregnancy to term, were the ones that really were psychiatrically disturbed, and in need of psychiatric help, and the authors concluded that we were concentrating our psychiatric services at the wrong place, that it was a normal, healthy reaction for the teenager to seek an abortion. It was not for them to attempt to continue the pregnancy.

Q Even with minors whose parents will give consent, does parental involvement as to consent involve delay?

A Yes.

Q Is one of the concerns of minor patients coming to a clinic the fear of parental reaction?

JUDGE ALDRICH: Didn't the doctor testify to that already on direct?

MR. LUCAS: She may have.

JUDGE ALDRICH: I thought so.

Q In your experience, have you encountered minors whose parents were gynecologists?

A Yes, very few.

Q Have you encountered minors whose parents were psychologists [91] or psychiatrists?

A A few.

Q I believe you indicated that you didn't think some minors could give an informed consent to tubal ligation.

A yes.

Q Is that in irreversible procedure gynecologically speaking?

A Yes.

Q Is an abortion an irreversible procedure?

A No.

Q Is it possible for a minor to come back and have a child a year later if she decides to do so?

A Yes.

JUDGE JULIAN: The abortion itself is irreversible.

MR. LUCAS: In terms of child bearing capacity — that is what I meant. I have no further questions.

.....

RE-CROSS EXAMINATION BY MR. BEHAR

Q In the rare situation sterility results as a result of complications from an abortion and then the procedure is irreversible relative to future childbearing?

A Yes.

Q Do you agree with Dr. Sturgis that a mid-trimester abortion is safer than a first trimester abortion?

A No. I do not. I don't think Dr. Sturgis made that [92] statement.

JUDGE ALDRICH: I don't know about Judge Julian, but Judge Freedman and I do not remember him saying that.

MR. BEHAR: I was surprised by the answer.

JUDGE ALDRICH: I would have been surprised if I had heard it.

Q As a parent, do you have any idea how you would feel if your daughter went and had an abortion without your consent and you discovered it later?

A I would feel I had failed as a mother, although it would depend on her motives. Possibly she would want to protect me, but I don't think it would happen. I feel my communication is better with my daughter than that. I think I would be the first one to know.

Q You indicated that the parental consent law in your view was an impediment.

A From the standpoint of time it is an impediment, yes.

Q There is no question about the principle?

A No question about the principle, no.

Q As far as time goes, if you have a situation where a minor is ambivalent as to the procedure, isn't it going to take time to resolve that ambivalence?

A Yes. In the case of ambivalence, no one would want to do the procedure on an ambivalent.

[93] Q Where there is a judgment by the physician that the minor might not really understand what is going on, it is going to take some time to work those things out?

A Obviously.

Q And it is going to require, as you indicated, a trained psychiatrist to resolve it?

A Right. Some of the delays are absolutely necessary.

MR. BEHAR: I have no further questions.

.....

RE-CROSS EXAMINATION BY MR. REYNOLDS

Q Doctor, did Dr. Sturgis testify that the second trimester was simpler rather than safer?

A I believe that is right.

Q Would you kindly identify the study to which you have made reference?

A Which study?

Q The recent one that was published.

A About comparing the aborters and non-aborters?

Q Yes.

A That is in the American Journal of Psychiatry for 1973 entitled "Teenage Pregnancies - Aborters versus Non-Aborters" or something like that, by Dr. Kane.

Q Would that be October of 1973?

A Right.

MR. REYNOLDS: Thank you.

[94] MR. LUCAS: I have enough copies for the Court and counsel. I would like to have this marked.

MR. REYNOLDS: May I inquire what this is being marked for?

MR. LUCAS: For identification at this time.

(Plaintiffs' Exhibit 8 for Identification.)

Q Would you please identify that document, Dr. Hodgson?

A This is the release of a statement made by the National Association of Children's Hospitals and Related Institutions.

Q Is the statement itself attached to it?

A Yes. Pediatric Bill of Rights is attached to the news release. I believe it is a news release.

Q Is that a true and accurate copy of the Pediatric Bill of Rights, as far as you could tell?

A Yes, it is.

Q Is it a nationally accepted policy statement with regard to medical treatment of minors?

A I hope it would be nationally accepted. It is still relatively new.

MR. LUCAS: I would like to move the admission of this exhibit as evidence of national standards with regard to medical treatment of minors.

MR. REYNOLDS: I object to it. I think it is an unusual procedure to introduce this on re-direct.

[95] JUDGE ALDRICH: Well, it might help me a little. Does this relate to the cross-examination?

MR. LUCAS: It does. It was brought up on cross.

JUDGE ALDRICH: That is what I thought. I thought the doctor was cross-examined at some length on this or, rather, she answered at some length, perhaps unexpectedly from the standpoint of the examiner.

JUDGE JULIAN: This purports to be the National Association of Children's Hospitals and Related Institutions, Inc. I don't know what this corporate entity is or what particular type of institution it is or what it encompasses. For all I know, it may be a corporation with one or two or three hospitals involved in it.

JUDGE ALDRICH: We won't take it. Return it, please. Are counsel through with this witness?

MR. REYNOLDS: I am.

MR. LUCAS: Yes, Your Honor.

JUDGE ALDRICH: Two o'clock.

(Recess)

.....

[96] (AFTERNOON SESSION:)
(2:00 P.M.)

MR. BEHAR: Professor Nadelson, please.

.....

CAROL NADELSON (RECALLED)
CROSS-EXAMINATION BY MR. BEHAR

Q Would you please restate your name for the record?

A Carol Nadelson.

Q Is it your view, Doctor, that a woman who is faced with a decision as to whether to have an abortion needs counseling by knowledgeable, experienced people who are able to explore the alternatives with her objectively and sensitively?

A Yes.

Q Is counseling by knowledgeable, experienced and objective people even more important?

MR. LUCAS: Objection. I would like a definition of knowledgeable and experienced people.

JUDGE JULIAN: He appears to be reading something. Are you reading from the testimony given in the case hitherto?

MR. BEHAR: No, I am not.

JUDGE ALDRICH: Would you clarify what you mean?

MR. BEHAR: I am referring to a letter this witness has written to a newspaper.

[97] JUDGE ALDRICH: All right. The objection is overruled.

Q I ask you, Doctor, is counseling by knowledgeable, experienced and objective people even more important in the situation of a minor?

A Yes.

Q Why would that be?

A I think minors are a higher risk, in terms especially of repeating the same situation, if they do not have adequate counseling.

Q This repetition is a standard psychological phenomenon, repetition compulsion?

A No.

Q That is not what you are referring to?

A No.

Q Why should there be counseling at all relative to an abortion decision?

A I think people need to be aware of all of the alternatives that face them and the implications of each of them as well as what future alternatives there are for family planning, etc.

Q You don't routinely counsel every minor who is going to have an appendectomy at Beth Israel?

A No.

Q Why is this particular procedure singled out?

A It is difficult to have two appendectomies. It is a [98] procedure that happens once. That does not have anything to do with one's choice in the matter of getting pregnant.

Q It is the possible frequency of recurrence that requires counseling. Is that what you are saying?

A That is one aspect of it, yes.

Q Are there other aspects?

A Of pregnancy?

Q Of why counseling at all.

A Because counseling usually occurs in a setting of some kind of either internal psychological or family turmoil or sometimes it results from external pressure which adolescents may not be able to understand completely or cope with.

Q If I were to characterize counseling as non-directive and exploratory, would you know what I meant?

A I would, but I don't know if anybody else would.

Q Would you explain what those terms mean to you?

A I assume what you are talking about is counseling where the counselor asks the person to describe and discuss what her feelings are and how she understands her situation, and talks about why it happened and what happened without the counselor intervening with the counselor's value judgments.

Q That is correct. That is what I was referring to. Doctor, in your judgment, is this kind of non-directive, exploratory counseling the kind of counseling that you give in the abortion [99] context?

A That is one aspect of it.

Q That is one aspect. Are there others?

A There are times when a teenager has to be counseled in terms of contraceptive use, which is fairly direct and explicit.

Q But that is the contraceptive situation.

A That is all part of the counseling situation though.

Q As to the aspect of counseling that concerns abortion, you would say that good medical practice would be to engage in exploratory and directive counseling?

A I am afraid we are not on the same wave length about this. I don't quite understand.

Q In the abortion situation, is it important for the counselor not to interject his or her own views in the matter?

A Yes.

Q Is didactic counseling in your opinion improper medical practice in the situation?

A I believe that I said that a certain aspect of counseling is directive. Since it involves what occurs when one has a pregnancy and one has an abortion, those are facts that one should be able to communicate in the counseling situation, so they are directive.

Q Besides explaining the procedure, and we're dealing with an emotional issue that might be at issue, is it fair to say that [100] good medical practice would not require didactic counseling?

A Would you define didactic?

Q Getting across the counselor's point of view.

A That is different than didactic. You mean the counselor's point of view?

Q Yes, that's right.

A I would say that one should not intervene with one's own point of view.

Q What are the possible detrimental effects of counseling where the counselor's point of view is projected upon the minor who is confronted with an abortion decision?

A That would be to put the minor in the same situation as the minor is often put in at home, which is that somebody else is just telling the person what to do, and they don't have any sense of what it is that the issue means for them or what they need to do in that situation.

Q Do you have an opinion as to whether a person who has strong moral feelings against abortion could be an effective counselor?

A I think that person can be if that person is aware of those feelings and has been careful not to allow them to interfere in the situation. I would doubt if it happened, but it is certainly possible.

Q You have indicated that counselors should be knowledgeable.

A Yes.

[101] Q What do you understand a knowledgeable counselor to be?

A A knowledgeable counselor is someone who has some familiarity with basic psychological principles, who knows something about interview technique, who has familiarity with the developmental issues at any age, and knows something about pregnancy and contraception, and who knows something about the indications and contra-indications in the situation.

Q You, yourself have had training in this regard?

A Yes.

Q It is possible to get training?

A Surely.

Q Here in Massachusetts?

A Yes.

Q Can you give us some schools where this kind of training is available?

A We certainly train our people at the hospital. These are staff people who do counseling, social workers, for example, and the Planned Parenthood certainly does an excellent job.

Q Educational facilities?

A Do you mean universities?

Q Well, is it possible to get formal training to be a counselor?

A By formal, what do you mean?

Q Associated with a school.

[102] A Do you mean to get a bachelor's degree or something like that?

Q Or to receive instructions from courses at a school in these kinds of counseling techniques we are talking about.

A Do you mean in abortion counseling?

Q That's right.

A Not that I know of.

Q When you use the term abortion, are you referring to any particular trimester?

A I wasn't at the time.

Q Were you referring to all trimesters?

A I was referring to the time when one does abortions, which is within the first and second trimester.

Q So you are not referring to the third trimester in any circumstances?

A No.

Q Just the first two?

A Yes.

Q Does the term abortion center have any meaning for you?

A Abortion center?

Q Yes.

A I suppose what you would mean would be a place where people do abortions.

Q Does Beth Israel have a policy regarding the performing of abortions on minors relative to parental consent?

[103] A I can answer more specifically up until last January. There have been some changes. The policy has always been the same as for any operative procedure which requires parental consent for any minor.

Q Is this a written policy at the hospital?

A I assume it is.

Q You indicated on direct testimony that parental consent can cause delay in this procedure which could cause some sort of emotional upset in a minor.

A Yes.

Q Isn't it a fact, Doctor, that if the situation is hurried in some cases, that that can lead to a long-term unfavorable resolution of a minor's dilemma?

A I think you are posing two situations that are difficult to untangle. In the situation of a pregnancy one is weighing one risk against another.

Q Let us take the situation where the physician has the feeling that the minor does not appreciate what is going on, the minor who desires an abortion.

In your view, if that decision is hurried, isn't it likely that there would be long-term detrimental effects to that minor, if the decision is hurried?

A Again, it depends on what you mean by long-term detrimental effects.

Q Let's say a week.

[104] A A week's delay? Well, if it were a 19 week pregnancy or 20 weeks, then a week would make it very difficult. If you were at 12 weeks and you were going into the 13th, you would be weighing the physical risk against an emotional risk.

Q Doctor —

JUDGE JULIAN: It would be better if you did not interrupt the witness. Would you continue, Doctor?

THE WITNESS: What I was referring to was that one is never making a clear-cut decision on the basis of one factor. One always has to consider all the issues involved. If the minor has to have a saline abortion rather than a suction abortion, there is a physical as well as an emotional difference, so it would depend on what the particular circumstances are.

Q If the physician senses an ambivalence on the part of the minor, would it be in the best interests of the minor to rush the abortion decision with that kind of analysis of her situation?

A It would not be unless there were some other extenuating circumstances.

Q How is the counseling done by you at Beth Israel Hospital? Is it individually?

A Yes.

Q Is there any group counseling?

[105] A There is none.

Q Do you have an opinion as to whether group counseling, where minors and adults are intermingled, would be acceptable medical practice relative to a minor faced with an abortion decision?

A I would think it would be rather difficult.

Q How much time do you spend with a patient counseling her?

A As a counselor?

Q Yes.

A I do not do counseling at this moment.

Q You did, though, in the past?

A Yes.

Q What was the time that you spent individually with your patients?

A I usually spent at least an hour with each person.

Q Do you regard that as a basic minimum requirement, that kind of contact, over a period of time?

A I would think so, except that is not the only part of the counseling procedure.

Q So there is more beyond the hour?

A Yes.

Q There is more beyond the individual hour of the doctor-patient contact?

A Yes.

Q Did you do a psychiatric evaluation under the older law in [106] Massachusetts?

A Yes, I did.

Q Did you ever refuse to recommend a patient for an abortion under the old law?

A Yes.

Q Can you indicate the reasons for that refusal?

A It is difficult to think back on a specific instance. Most of the time, as I recall, and I can't be terribly specific, it was related to the person's ambivalence and my feeling that the person was not sure about what they wanted or, in fact, wanted something else. This is more often true in minors than in adults.

Q Do you encounter minors who have some ambivalence as to the abortion procedure because of religious reasons?

A Sometimes.

Q Can you be illustrative of what kind of situations you come in contact with?

A It most often involves a family issue where the teenager believes her family feels one way and she feels the other way and she is afraid of what will happen in her family situation. That is usually what one sees.

Occasionally, one sees a teenager who is troubled about the morality issue, but that is not as frequent as the former. By the time we see people, usually they have thought about it a great deal. They do not make an instant, [107] impulsive decision.

Q I take it that some of the counseling you do is on contraception?

A Yes.

Q Do you think it good medical practice in counseling a patient, who may or may not have religious concerns about abortion, to refer to the rhythm method of contraception as "Birth Control Vatican Roulette"?

A Do I personally? No, I don't.

Q Do you think it good medical practice, consistent with objective counseling, to refer to the Pope's pronouncement on abortion by stating that his concept of solving the problem is rather backward?

JUDGE ALDRICH: Do you think this is pertinent cross-examination?

MR. LUCAS: I object. It is beyond the field of proper cross-examination as to the rights of minors.

JUDGE ALDRICH: I am asking Mr. Behar. Do you think this is pertinent cross-examination?

MR. BEHAR: I think it is pertinent to establish what is good medical practice in the counseling situation.

JUDGE ALDRICH: Choice of words, semantics, language? What has it got to do with medical practice?

MR. BEHAR: There has been testimony from every witness that we have had that counseling is an important [108] part of this situation and that objective counseling is

necessary, and I suggest that when some of the named plaintiffs take the stand, we might find some of the counseling that has been given is not exactly that.

JUDGE ALDRICH: That may be so, but that is not presently before us.

MR. LUCAS: We would submit to you —

JUDGE ALDRICH: Your objection is sustained.

Q Does psychiatry break down life into developmental periods?

A It doesn't specifically deal with that issue except psychologically.

Q Well, to the extent that it deals with it psychologically, is it fair to say there are developmental periods?

A Yes.

Q This is standard psychological and psychiatric methodology?

A Well, yes.

Q For the ages 11 through 18, are there any specific developmental periods that you can isolate?

A One usually refers to that as adolescence or pre-adolescence. The beginning and the end of adolescence are really not clearly definable. One can use a chronological model or one can decide on the basis of physical maturity. It really is variable.

Q But it is standard psychiatric and psychological methodology to segment that area of life into developmental periods?

[109] A Yes.

Q There is early adolescence?

A Yes.

Q And there is later adolescence, is there not?

A Yes.

Q Isn't it a fact, Doctor, that in a given developmental period there are different psychological and emotional goals?

A Yes.

JUDGE JULIAN: Some what?

MR. BEHAR: Goals, g-o-a-l-s, psychological and emotional goals.

JUDGE ALDRICH: I'm sorry, but I still don't have the word.

MR. BEHAR: Goals, g-o-a-l-s.

JUDGE ALDRICH: Thank you.

Q What would be in your judgment some of the psychological and emotional goals in early adolescence?

A I would look at adolescence as a developmental spectrum where there are certain goals for the whole period and the dividing of adolescence into early and late is a kind of convenience which has to do with the kinds of problems adolescents at those ages have with the goals.

If you are referring to the whole process, there are several major tasks.

Q What would they be?

[110] A They would be the beginning of separation from parental and family ties and the beginning of forming one's own individual identity and one's own goals. Included in that would be social identity and a whole variety of other kinds of personal issues that the adolescent has to work toward.

Q You indicated that the use of the terms early and later adolescence was more a convenience for problems that are associated with a particular age group. Is that right?

A Yes.

Q You nod your head. Is that correct?

A Yes.

Q Isn't it a fact that depending on age, there are different psychological problems that occur?

A Yes.

Q And they are associated with an age group, isn't that the case?

A Yes.

Q Doesn't the fact that psychological methodology breaks down life into developmental periods indicate that there are different degrees of maturity that could be associated with that?

A It depends really on what you mean by maturity.

Q Well, wouldn't you say that the fact we are dealing with, different developmental stages, indicates different degrees of maturity at those stages?

[111] A An adolescent at 13 acting like a 13 year old who is mature.

Q As to one's personal identity and sexual identity, doesn't an abortion have a great impact on those goals, on the realization of those goals?

A There is not much evidence of that.

Q You would disagree with that?

A I would say I really don't know, but there is not very much evidence that that is so.

Q Do you regard an abortion as a potential trauma to the goal of realizing independent gender identity?

A Well, I would have to find out a little bit more about what you really mean.

Q What is it that you don't understand?

A Well, it doesn't have much to do with gender identity. The whole issue of having a pregnancy in the first place is more direct than the end result at that point.

Q The resolution of the pregnancy clearly has an effect on the developmental goals, is that correct?

A Yes.

JUDGE JULIAN: What effect does it have, in your opinion?

THE WITNESS: I think it makes a change in a person's usual life. For example, if a minor continues her pregnancy, she would no longer be an adolescent but a [112] mother.

In addition, that would be a major role shift for her and a big developmental change.

JUDGE JULIAN: If there is a termination of pregnancy, what effect does that have?

THE WITNESS: Termination of the pregnancy might have an effect depending on what it means to her and how she has settled the issue that caused her to be pregnant in the first place.

JUDGE JULIAN: So there is no answer?

THE WITNESS: No specific answer. It is very individual.

JUDGE JULIAN: Is it because there is a lack of data on the subject?

THE WITNESS: Well, that is one part of it, yes. There is a lack of specific data on teenagers who have had a pregnancy terminated by abortion. There are one or two studies in the literature on the subject. However, I think it is also related to the specific individual and the family dynamics of each case that makes it difficult to give a generalized answer.

Q Isn't it the case, Doctor, that a decision to continue or terminate a pregnancy can be made on many levels?

A Yes.

Q What are some of those levels?

A A person could certainly make a decision that is overt [113] and can say one thing and mean something else. They can certainly be ambivalent, which is characteristic of adolescence anyway.

Q In counseling the minor, do you regard it as important to determine what level the decision is being made at, in a situation where a minor desires to have an abortion?

A I am sure she really understands and wants it versus whether she says one thing and really means another. Yes, I think that is very important.

Q Why is that?

A Because I think if a minor is not at least as certain as a minor can be in such a situation, then she may be ambivalent at another point about the choice she made.

Q If, in fact, there is ambivalence and it is not detected, that can have an adverse consequence for the later development of the minor?

A There is always ambivalence, I think you know that, in every decision, and adolescents are particularly prone to be ambivalent about everything. One has to do the best one can given the situation.

JUDGE FREEDMAN: The mature adolescent, a person 17 or thereabouts, are you saying she is inclined to be ambivalent?

THE WITNESS: It is more common in younger adolescents to be ambivalent about many things. That is [114] part of the developmental process — to have to sort out and learn how to make decisions, and it is very difficult to make a decision, and as adolescents get older, they become better able to do that, and the age variation has to do with the individual variables for the case, but a 17 year old will generally be more able to make a less ambivalent decision than a 13 year old, although there is a wide variation.

JUDGE JULIAN: When you use the word ambivalent, are you giving it the same meaning as uncertain?

THE WITNESS: Yes.

JUDGE FREEDMAN: Do you agree with an earlier witness who stated that the age factor is not as important as the maturity of the individual that is being treated?

THE WITNESS: Yes. I think one can find a 13 year old who is better able to make a decision than a 17 year old.

JUDGE FREEDMAN: Under certain circumstances?

THE WITNESS: Yes.

Q You refer to the situation of the unwanted pregnancy as a crisis situation.

A Yes.

Q Is that a psychological term?

A Yes.

[115] Q What does that mean?

A Well, in the specific instance that I believe you are referring to, it is generally the first time in an adolescent's life that she has had to face a decision where there is a permanent life-long effect and where she has to determine a life goal that may well be immutable.

Q I believe you described the minor in this situation by a variety of terms such as being upset and anxious; is that correct?

A Yes.

Q Is it your testimony that a minor in this situation should be alone in her situation?

A One would hope she would not be.

Q Clearly, she should not be left just to flounder with her fears and anxieties?

A Certainly not.

Q It is certainly the case, Doctor, that parents are typically the ones who are most suited to provide support in this situation?

A Some are and some are not.

JUDGE JULIAN: But generally speaking they are, Doctor?

THE WITNESS: Well, it depends on which population you are talking about. I think one has to be careful about what one really means by parents and what population [116] of people you are talking about. If you look at the people —

JUDGE JULIAN: In our society —

JUDGE ALDRICH: She hasn't finished.

JUDGE JULIAN: She is not answering the question put to her. Would you read the question?

(The following question is read:)

"Q Isn't it the case, Doctor, that parents are typically the ones who are most suited to provide support in this situation?"

JUDGE JULIAN: In our society, speaking generally, as a general proposition.

THE WITNESS: I could say yes. I would really have to qualify that because I think that is an ideal situation. It does not often refer to parents who are in their own stressful situation, who have difficulty with their parental role at certain times of their life or under certain circumstances and they may at times be the worst people that one could talk to because they are so upset.

Q Doesn't any surgical procedure involve some possible psychological problem?

A It can, yes.

JUDGE ALDRICH: I can't hear you, Doctor.

THE WITNESS: It can, yes.

Q There is a natural reaction against invasion of the body, is there not?

[117] A I don't know what you mean.

Q An antipathy to having the body invaded in a surgical procedure.

A Physically or emotionally?

Q Physically.

A Physically, yes.

Q With emotional ramifications?

A Well, it is a stress.

Q Isn't termination of pregnancy really a double psychological problem because you have the typical stressful situation of any surgical procedure plus the interruption of the pregnancy?

A Well, that is a complicated question. It is the same kind of stress as a surgical procedure is. It depends on what the meaning of pregnancy is to the individual, whether that adds to it or not.

Q So it can be a double problem?

A It can be.

Q But need not be?

A But need not be.

Q In your view, should there be any time lapse between counseling and the abortion?

A By time lapse, you mean what?

Q Giving the patient a chance to think things over.

A Well, it would be best if one did not have to rush, yes.

Q Ideally, it is important to have some sort of leeway between [118] the counseling and the actual procedure?

A Yes.

Q In your counseling do you discuss possible psychological reactions to abortion with the minor?

A What are you referring to specifically?

Q Maybe a sense of guilt, a sense of sadness. Do you discuss these as being possible reactions to the experience?

A Yes.

Q Is it important to discuss those kinds of feelings?

A I think it is important, but I think that one has to maintain a perspective about it depending on the individual.

Q But there are individual situations where it would be important to say, "You might feel sad; you might feel guilty"?

A True.

Q In your opinion, Doctor, do the psychological problems that follow abortion occur more dramatically in the young than in older women?

A Well, there is no direct evidence that I can quote to you on that because so little work has been done on it. My impression is that it does not have to do with the age as much as the particular circumstances and the appropriateness of the resolution.

Q In your experience, Doctor, do minors tend to tell a doctor what he wants to hear in the situation when confronted with an abortion?

[119] A Again, I can not answer that as directly as perhaps you would like. It depends on the particular circumstances and what the role of the doctor is in that situation.

Q Isn't there a feeling that many adolescents are happy to have somebody involved in running the show, they come in contact with a doctor and they're happy to have some older figure involved?

A That is sometimes the case. That isn't what I was referring to.

Q What were you referring to?

A In the situation where the doctor is the person who has to make the decision, as under the old rule, as to whether there was some, you know, major reason for an abortion, and you were more likely to have somebody tell you what she thought you wanted to know than one is when they have some more freedom of choice.

Q You have indicated that generally parental involvement is a desirable situation?

A Yes.

Q Does that go for the minor and the parent?

A Yes.

Q Could you elaborate for the Court what the benefits are to both the minor and the parents when they are involved?

A I think it is very important for a minor to have parental support and somebody with her. It is a very [120] important part of feeling loved and cared about, especially if the pregnancy occurred in the context of some question about that, and I think it is an important part of building a relationship between teenagers and their parents or between any two people who have to go through a crisis together. It can really strengthen the relationship.

Q The fact that there might be some reluctance or ambivalence about informing the parents, and the fact that there might be emotional upset when there is information given to

the parents, does not mean that the family can not grow from that experience?

A It depends entirely on the situation.

Q You have known families to in fact grow from the experience?

A Yes.

Q You have indicated that parental involvement is even encouraged at Beth Israel. How is that done?

A Generally, what we do with the teenager is to have a child psychiatrist see her as the counselor, and occasionally we alter the procedure some, and the social worker generally sees one or both parents, depending on what seems to be the wish and the indication, and then often they will be together to talk about where they are going and what is happening, and occasionally they will meet after also.

Q If the minor is reluctant to inform her parents that she is pregnant, is it important to find out why she is reluctant?

[121] A Yes.

Q Why is that?

A I think it is important to have them available if there is any possibility of strengthening the relationship between them, if one thinks there is a benefit.

Q So merely because the minor says, "I don't want to inform my parents I am pregnant" does not mean that the matter should be dropped right there?

A I think one should find out why.

Q Have you encountered situations where minors were reluctant to inform their parents because of particular fears and the fears were not realized?

A Yes.

Q What kind of fears did the minors express that were ultimately not realized?

A Often minors are fearful of being severely reprimanded or

ostracized or punished by their parents. Those are the most frequent fears.

Q And when the parents are informed, these fears are not realized?

A In some cases.

Q Would you say, Doctor, that the incidence of those cases where the fears are not realized is greater than the situations where parents should not be informed?

A Yes.

Q That is clearly the case, right?

A Well, I can't quote figures.

JUDGE JULIAN: Clearly what?

MR. BEHAR: I asked if that was clearly the case.

JUDGE ALDRICH: If what was?

MR. BEHAR: If the incidence where the fears of the minor were not realized were greater than situations where the parents should not be informed.

JUDGE ALDRICH: I don't understand the question.

MR. BEHAR: The witness has answered the question.

JUDGE ALDRICH: Then we will have to find out what the witness understood by the question. When I first heard the question, and Judge Julian and I had the same trouble, I thought you were being asked: when the parents ultimately did learn, whether it was more often the case the fears were not realized then the fears were realized. When I heard the question rephrased or repeated, he is comparing it with cases where the parents were not informed at all.

I don't know how you could compare oranges and lemons.

THE WITNESS: I understood it the way you did.

Q The way the Judge did — that would be your answer? [123] A Yes.

Q You indicated there were situations where in your judgment the parents should not be informed?

A Yes.

JUDGE ALDRICH: The answer was what?

THE WITNESS: Yes. Q I would ask you, Doctor, whether the incidence of that situation where the parents had not been informed in your judgment is greater than the incidence of situations where the minor's fears were not realized?

A That is complicated. As I understand it, you are asking me to kind of categorize frequencies.

Q That's right. You said you have encountered situations where the fears of the minor are not realized. That occurs with a certain frequency?

A Yes.

Q Then you said that you have encountered situations where you would not want to inform the parents of the minor's pregnancy?

A Yes.

Q Which of those two situations have the greater frequency?

A Well, it is more often the situation where the fears are not realized. I could not give you the figures on that.

JUDGE JULIAN: I would like to put this question to the witness. Doctor, have you had many [124] instances involving a teenage pregnant girl, when the abortion has been performed, without the knowledge or consent of the parents, assuming she has parents?

THE WITNESS: Invariably at least one parent is involved.

JUDGE JULIAN: Have you had any cases where the operation was performed, the abortion was performed, without the consent of either parent?

THE WITNESS: We have had that happen.

JUDGE JULIAN: How many cases have you had?

THE WITNESS: I can't be specific, but —

JUDGE JULIAN: Approximately.

THE WITNESS: I think probably in our hospital it must happen four or five times a year.

JUDGE JULIAN: To your knowledge?

THE WITNESS: Yes. I can not be specific because I do not make the final decision. It is up to the chief of the obstetrics and gynecological service to work with the hospital lawyers, so that it is beyond my contact. I wouldn't know.

JUDGE JULIAN: You really don't know then?

THE WITNESS: I can't be more specific than that.

Q Doctor, in situations where you come in contact with minors and you sense an unstable family situation, have you or the [125] hospital petitioned the State Agency to have a guardian appointed?

A I can't be specific about the legal procedures. I am asked to evaluate someone. If there is the possibility that parental consent should be waived, if the adolescent says, "I will not" or "can not" or whatever, then that becomes part of the evaluation, and then I make a recommendation, and it is acted upon in a certain procedure that has nothing to do with me any more.

Q Is this being treated as an emergency? In other words, I thought you said that no surgical procedure is performed at the hospital unless there is parental consent. Are you saying now that the hospital makes an exception?

A For any kind of procedure where parental consent may not be obtainable.

JUDGE FREEDMAN: This happens four or five times a year?

THE WITNESS: Yes, in this situation.

JUDGE JULIAN: This is where the consent is not obtainable?

THE WITNESS: As I understand it, some kind of waiver is requested but I can not be specific on it.

JUDGE JULIAN: Are you referring to cases where an attempt was made to reach the parents but they could not be reached? Is that what you are talking about?

[126] THE WITNESS: No. Usually it has to do with particular circumstances. I recall one youngster who had a mother in a mental hospital and a father who was an alcoholic and was not available, and she had a brother who was over 21 at the time — this was several years ago — and that was the legal age, and I don't know how the procedure occurred, but he assumed a kind of guardianship and not the parents.

I think that our hospital lawyer can tell you more about how that works.

Q Oftentimes a minor might find it extremely unpleasant to have to inform her parents she is pregnant?

A Yes.

Q Yet that does not mean it is not in her best interest to inform the parents; isn't that so?

A Yes.

Q You testified in some instances it would be harmful to the family relationship if the parents were informed of the minor's pregnancy.

A Yes.

Q Do you have an opinion as to whether it would be more harmful if the parents were informed of the pregnancy as a result of the minor being hospitalized for complications?

A I don't think I can answer that question. Can you [127] clarify it?

Q In a situation where an abortion is performed upon a minor without parental consent and there are complications and the minor is hospitalized and the parents are informed of the reasons for the hospitalization and hence the pregnancy, do you have an opinion as to whether that would be more harmful to the family if the parents learned in that situation?

A I think it is really something that can only be individually determined, but certainly it is one of the considerations that one weighs and discusses and attempts to resolve in allowing such a procedure to occur.

Q You could see how that could be particularly damaging to the family?

A It could be, yes. It is conceivable, but I don't think it is usual.

Q You don't think what?

A It is not the usual situation.

Q In the unusual situation there is a clear potential for harm?

A You are talking about potentiality.

Q Pregnancy carried to term doesn't have to be detrimental to the minor's well-being, does it?

A It doesn't have to be.

Q It may potentially be, right?

A Well, yes.

Q With regard to the age groups we are talking about, 12 [128] through 17, for example, have you encountered minors in these age groups who you felt could not appreciate the medical procedure of an abortion?

A Not after it was explained to them.

Q You have found that everyone could appreciate —?

A No. People have varying capacities for understanding and one has to work harder with people who do not understand as much.

Q In your experience, Doctor, have you ever encountered any minors in the age groups we are talking about who in your judgment could not give an informed consent to this procedure?

A I personally have not. It has happened when someone was defined as mentally retarded.

Q That is the only situation you would posit in your experience?

A In my experience that was the only time I can clearly say that.

Q When you indicated that for minors — that a majority of them were capable of giving an informed consent, doesn't your answer indicate that there is a minority who can not?

A It depends on how one approached the problem. It is a very complicated problem, but if one spends time explaining and informing, then you are doing a different thing than asking someone to make a decision with no information. So that in our situation at the hospital, we work very hard at dealing with the informed consent issue.

[129] Q In your situation at the hospital, it is medically speaking the optimum situation?

A I think it probably is.

Q You are an experienced psychiatrist, right?

A Yes.

Q You have the resources of a teaching hospital?

A Yes.

Q You indicated that in your experience one per cent of the minors had an adverse psychological reaction to an abortion?

A Yes.

Q Isn't that figure very low when compared to the literature?

A The range in the literature is one to thirteen per cent.

JUDGE JULIAN: What is that again?

THE WITNESS: The range in the literature of adverse effects is between one and thirteen per cent, depending on the study, who did it and what they looked for. In minors there is little data, one could hardly even say.

The one reasonably complete study that I know about had a very low incidence. Something like thirteen per cent was

their figure of minors who felt somewhat uncertain that they had made the right choice.

Q The figure that you gave is low?

A That is the figure we would estimate from our work.

Q In your work, you are dealing with a situation where you have [130] parental involvement, as you have testified to before?

A Yes.

Q That might be one reason for the low figure?

A But sometimes one parent and not both.

Q I understand. In your experience is impulsiveness a characteristic of adolescence?

A Yes.

Q Isn't that one reason why parental involvement in important decisions in their lives is important?

A Again, I have to give the same qualification as I did before. I think, yes, it can be, but one has to backtrack onto the issue how they got pregnant in the first place.

Q There are other crises in the adolescent's life, aren't there?

A Yes.

Q Besides the unwanted pregnancy?

A Yes.

JUDGE JULIAN: I did not hear your question.

Q There are other crises in the adolescent's life besides the situation of an unwanted pregnancy?

A Yes.

Q In those situations, isn't it uniformly desirable to have the parents involved?

A Well, I think it depends on the situation, but if a kid gets flunked out of school and the parents are very achievement oriented, they may have a very terrible time with that [131] and be very punitive and they may need some other counseling intervention to help work it out.

Q But still the principle would apply as a general proposition that in a major crisis in the adolescent's life, the parents are necessary?

A Yes.

Q In the situation where you have reluctance about involving the parents, as I understand it — well, is this a situation that is a typical one sociologically?

A When you are talking about parents, I am not sure whether you are referring to a parent or two parents. We see many teenagers who have one parent. The other one is unavailable for one reason or another.

Q Is that a typical situation?

A In our experience it is fairly common.

Q You do have the one parent available?

A One parent, yes.

Q In your judgment is there a difference, Doctor, between understanding a surgical procedure and appreciating the emotional situation?

A Yes.

Q Is it fair to say that with regard to younger adolescents the emotional appreciation may be entirely lacking even though there may be an intellectual understanding of the operation?

A Well, that could be.

[132] Q In your experience, has that been the case?

A No, not very often.

Q But it has occurred?

A Yes.

Q Doctor, isn't it fair to say that you have consistently taken a position in opposition to any State regulation in the area of abortion?

A No.

Q Haven't you, in fact, consistently urged the repeal of all legislation regarding abortion?

A No.

Q Haven't you joined in newspaper ads urging the repeal of the Massachusetts abortion laws?

A Well, the thrust of that, I believe, at this point is to support the Supreme Court decision.

Q Prior to the Supreme Court decision you were fairly outspoken, were you not, in criticism of all state laws applying to abortion?

A I would like to qualify that to have it relate to the medical aspects. I think medical procedures should be medically regulated.

Q That is the basis for your opposition?

A Yes.

Q In most situations that have involved the dispute as to the desirability of State regulation or State involvement, isn't [133] it correct that you have opposed the State involvement?

A Well, I would have to understand what you really mean by involvement.

Q Let us take one recent case, the situation where a doctor at the Boston City Hospital was being prosecuted. You voiced your opposition of that prosecution as stemming from an abortion?

A Yes.

Q Are you aware of what the Government's case is going to be in that case?

A Not fully.

Q So you joined in opposition to this particular prosecution of a doctor without informing yourself of the other side?

A Well, I believe I am fairly well informed about it. My understanding of it has to do with the fact, as I see it, that the Supreme Court made a judgment about a situation and I saw nothing in what he did that was contrary to that judgment.

Q You don't know what the Government's case is going to be in that case?

A I can not specifically tell you the details.

Q It may well be based on eyewitness testimony and other testimony — that there is a case there?

A It is possible, but in my reading of it that was not what I saw.

[134] Q Your reading was based on the doctor's representations?

A And the newspaper reports and other reports that I have read, yes.

Q Isn't it atypical you would make a judgment without informing yourself of the other side's position?

A I have informed myself as completely as any citizen might.

Q You don't know what the Government's case is going to be?

A How would I know that?

MR. BEHAR: I have no further questions.

JUDGE FREEDMAN: Doctor, you stated earlier in cross-examination that by and large the minor's fears of being ostracized or condemned or criticized by the parents when the pregnancy was made known have not occurred.

THE WITNESS: Yes.

JUDGE FREEDMAN: I would like to ask about the minority of the cases in which the fears have been justified. What traumatic experiences have occurred in the family relationship as a result?

THE WITNESS: What we have seen is on occasion a teenager has been asked to leave home, has been refused parental support, has been beaten. There are a whole variety of situations in that range depending, really, on the family circumstances. But those situations [135] do occur. Occasionally, one parent will attempt to deal with it by handling the situation alone fearing the wrath of the other parent.

And we often see a mother come in with a teenager saying, "Don't let my husband know about it because he'll kill her."

JUDGE FREEDMAN: Have further psychiatric or psychological disturbances occurred in the patient as a result?

THE WITNESS: Yes. It is very difficult to follow up this kind of situation because the people only come at certain times in their lives to be seen and we can not follow somebody who does not come, but there are further complications and family splitting.

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CROSS-EXAMINATION BY MR. REYNOLDS

Q Good afternoon, Doctor. Doctor, I believe on direct examination several weeks ago you said a number of the young women come to Beth Israel and are referred through various agencies.

A Yes.

Q Are these agencies of the State Government?

A No.

Q What are the agencies that refer them to you?

A I can't answer that specifically at this point since I [136] no longer have the job that I had last year where I was familiar with the specific details of the agency. I am not current on it.

Q Do you know, Doctor, in the year 1974 the relative magnitude of the number of abortions performed on young women under the age of 18?

A At the Beth Israel?

Q Yes.

A I would have to give you a rough estimate because I do not have the exact figures available, but about 25% of the people we have seen were 18 and under.

Q Eighteen and under?

A Yes.

Q Would that make any difference as to those below 18?

A Well, the figures are broken down that way. That is roughly the way it stands. I can not tell you the number of abortions we did last year, but it was something like 800, between 600 and 800, and 25% of that figure would be 18 and under.

Q You also have maintained at the hospital a clinic for young ladies who make the decision that they would like to carry full term; is that so?

A Yes.

Q How many young ladies opted for that choice in 1974?

A I am not familiar with the figures in that clinic.

[137] Q Do you know what composition the people in that clinic are by way of age? Are they mostly under age 18?

A They all are by definition.

Q Is that a clinic to which they go on a twice a week basis or some regular basis?

A They go on a regular basis. I don't think it is as often as once or twice a week.

Q Who is in charge of that clinic?

A Dr. Perlmutter.

Q What is her first name?

A Johanna.

Q A female doctor?

A Yes.

Q As to those teenagers or young women under 18 that you had occasion to interview, what is their situation? Do most or all of them live at home?

A It is extremely variable. I would say probably most of them do, but not all.

Q Do most of them attend school, public school, below the point where you graduate from high school?

A A fair number are school dropouts, but probably most attend at some intervals anyway.

Q Do any of them work for a living?

A Some.

Q Can you help us with the percentage of those who do work [138] for a living?

A I couldn't give you the figures.

Q You said most of your experience was not related to the evaluation of teenagers who are pregnant. Is that what you said on direct examination?

A Yes.

Q Are you presently concerned with a program dealing with young people who are pregnant? Are you presently working on an abortion program for young women under the age of 18?

A I am presently involved in a project on that, but that is not my primary job presently. It was up until last year.

Q When last year did your job end?

A January 1st.

Q So it would be January 1st of 1973 or 1974?

A January 1st of 1974 was when I took this new position.

Q I take it that Beth Israel Hospital's position is that, so far as you know it, there has to be an informed consent made and it stands neutral as to whether or not the young woman carries to term or aborts, is that correct?

A Yes.

MR. REYNOLDS: Thank you.

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[139] RE-DIRECT EXAMINATION BY MR. LUCAS

Q Doctor, you testified concerning some of the problems that minors have whose fears are realized would be compli-

cated by the requirement of both parents' consent being required.

A Yes.

Q Do you think there would be more minors whose fears were realized under those circumstances?

A Yes.

Q Are there some minors who go to their parents anyhow even before discovering consent is required?

A Yes, there are.

Q Do you find there are some minors who do not need any counseling at all because of their understanding?

A I would say I would be hard put to find a time when that would be true.

Q Do you find a large percentage of the minors coming in have made up their mind whether to have an abortion or not?

A A large percentage have made up their minds. More adults have made up their minds than minors. Most of them are somewhat confused about what to do.

Q Do the minors find it difficult to choose between the alternatives of continuing the pregnancy and terminating the pregnancy? Is that a difficult question?

A It is a difficult decision. Some make it more [140] easily than others.

Q Did you testify that there are even at the present time no college programs that you know of in training abortion counselors?

A Yes, there are some counseling training programs, but not necessarily specifically abortion or pregnancy counseling. That has been done by other agencies.

Q Isn't it true that until recently even medical textbooks did not have a discussion of contraception in them?

A That is true.

Q Amongst counselors or abortion counseling people without any formal degrees in counseling?

A Well, it depends on where the counselor works. At the Beth Israel they are all social workers who have a degree in social work, which would involve training in counseling. There are people who do counseling, I believe, in other agencies who are trained by those agencies and who may not have a degree in counseling.

Q In obtaining a degree in social work, is a person, in the past at least or up until very recently, going to have any exposure to actual abortion counseling? Is that an essential element for the degree?

A Sometimes not.

Q Is extensive experience in abortion counseling an adequate substitute for formal training?

[141] A Yes.

Q Do you find there are differences of opinion among different physicians and psychiatrists about various aspects of the abortion procedure and the methods of counseling?

MR. REYNOLDS: I object to that question.

JUDGE ALDRICH: Is that different from the question you asked, Mr. Reynolds?

MR. REYNOLDS: I don't think I asked her that.

JUDGE ALDRICH: I don't think you did. Mr. Behar certainly did.

MR. REYNOLDS: My point of view is a little bit different from Mr. Behar's point of view. I submit that it is a duplicitious question.

MR. LUCAS: I will withdraw it and ask the question more clearly.

Q Do psychiatrists differ as to the desirability of group versus individual counseling?

A There is very little that has been written about group counseling in this particular situation. I think psychiatrists would agree that counseling is important and necessary.

Q Do you find that some psychiatrists feel that group counseling is better and others feel the other way?

A Yes, I would think so, but the literature is not very abundant in the area of group counseling. There are [142] post-abortion groups. That is different.

Q Would you say there are no current opinions formed as to which is most desirable, group counseling versus individual counseling?

MR. REYNOLDS: Objection.

JUDGE ALDRICH: Sustained.

Q Are there any firm opinions formed as to the desirability of group counseling versus individual counseling?

MR. REYNOLDS: Objection. She has answered that question.

JUDGE ALDRICH: If that is your only objection, then you may answer.

A There is very little familiarity that I have with group counseling. In this particular area people favor individual counseling, family counseling.

Q In the context of a group counseling situation, is it possible that the inclusion of adults may facilitate communication among the adults?

MR. BEHAR: I object.

JUDGE JULIAN: That seems to be leading.

Q Are there any circumstances under which it would be reasonable to include both adults and minors in the same group counseling situation?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

[143] JUDGE ALDRICH: If this witness has any opinion, she may give it.

A I think it could be very helpful.

MR. LUCAS: I have no further questions. I believe at the last hearing we did not have Dr. Nadelson's curriculum vita.

I apologize for having it so late. I only have two copies. May this be marked as an exhibit? I move it be admitted as her curriculum vita, detailing her experience and background.

JUDGE ALDRICH: It may be admitted.
(Plaintiff's Exhibit 9 in evidence.)

Q Is this a copy of your curriculum vita?

A Yes, it is.

MR. LUCAS: No further questions of this witness.

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RE-CROSS EXAMINATION BY MR. BEHAR

Q In the situation where you have stated that the minor's fears are realized, isn't it the case that this is extremely rare in your experience?

A No.

Q It is clearly a lot rarer than the situation where fears are not realized?

A Yes.

Q Are you familiar with standard obstetrics textbooks such as [144] Williams on Obstetrics?

A I haven't read it in quite a few years.

Q Don't the textbooks all contain ample descriptions of various contraceptive techniques?

A My edition was in 1957. It had nothing on that at all.

Q At some point in regard to counseling do you think that counselors should be subjected to instruction from someone who does have formal training, such as yourself?

A Formal training, yes. I think there are some variations about what requirement one would have about the qualifications.

Q For formal training?

A Of some kind, yes.

MR. BEHAR: No further questions.

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RE-CROSS EXAMINATION BY MR. REYNOLDS

Q Doctor, I see from this document you are married to Dr. Theodore Nadelson?

A Yes.

Q Is he also a physician?

A Yes.

Q And you have two children?

A Yes.

Q How old are your children?

A Six and eight.

[145] Q Are they boy and girl?

A Yes.

Q As a parent would you wish your child to come to you in the event she found herself to be pregnant?

A I would hope so.

MR. REYNOLDS: Thank you.

JUDGE FREEDMAN: Anything further of this witness?

MR. LUCAS: No further questions.

JUDGE ALDRICH: Do you have more witnesses, Mr. Lucas?

MR. LUCAS: We do have both Dr. Zupnick and Mr. Bill Baird. Their depositions have already been taken, which took approximately a day or a day and a half.

It is our felling that the depositions are an adequate predicate for introducing their evidence.

We would like to move, in lieu of having them testify and further drag out the hearing, that their depositions be accepted as their testimony.

JUDGE ALDRICH: Mr. Behar?

MR. BEHAR: As I indicated at a prior hearing, we would object to that. We think the Court ought to see the witnesses. As you know, discovery is often a wideranging process. These depositions were really just to get information more than anything else and lots of the answers [146] are irrelevant and we think would not be admissible in evidence, and we would object.

MR. REYNOLDS: I join in my brother's objection, if Your Honor please.

JUDGE ALDRICH: I just finished trying a patent case in which the witness' direct examination was put in through the deposition and he was then subjected to cross-examination.

Now, who took the depositions?

MR. BEHAR: We did.

JUDGE ALDRICH: Your position will be sustained. We will hear the witnesses.

MR. LUCAS: The plaintiffs call as their next witness the plaintiff, Dr. Gerald Zupnick.

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GERALD ZUPNICK (SWORN)

DIRECT EXAMINATION BY MR. LUCAS

Q Would you state your name and address?

A Gerald Zupnick, 79 Berkshire Road, Great Neck, New York, 11023.

Q Are you a plaintiff in this lawsuit?

A Yes, I am.

Q What is your current association with the Parents Aid Society?

A I am a contract physician with Parents Aid Society.

[147] Q What does that entail?

A That entails my performance of medical services for Parents Aid Society.

Q Are you associated with Parents Aid Society in New York and in Boston?

A Yes.

Q Are you an employee of Parents Aid Society?

A No, I am not.

Q Would you describe for the Court your background and education, starting with college and through your medical training.

A I received a B.A. degree from Columbia University in New York City in 1964. I received an M.D. degree from the University of Louisville School of Medicine in 1968. I did a straight surgical internship at Emory University Grady Memorial Hospital in Atlanta, Georgia from July, 1968 to June, 1969.

From July, 1969 to July, 1970, I was on the staff of the Emory University School of Medicine, Department of Gynecology and Obstetrics, Division of Family Planning.

Q Are you licensed to practice in the Commonwealth of Massachusetts?

A Yes.

Q Would you tell the Court what other states you are licensed to practice in?

[148] A Kentucky, Georgia, California, Florida, New York, Connecticut and Washington, D.C.

Q Would you describe what your experience has been during abortion procedures?

A I have performed approximately 5,000 first trimester abortions under local anesthesia.

Q At what facilities have you performed these procedures?

A I trained at Williams Services in Manhattan in May of 1972 to December of 1972, and I have been working with the Parents Aid Society since July 1, 1973.

Q Were you aware that around November 1st a law was to come into effect in Massachusetts requiring the consent of both parents for abortion procedures for minors under the age of 18?

A Yes.

MR. REYNOLDS: Objection as to the characterization of the law.

JUDGE ALDRICH: We will pay no attention to the characterization. Go ahead.

THE WITNESS: Yes.

Q Were you concerned that this law might be enforced against you in any way?

A Yes.

Q Were you fearful of the possibility of any prosecution?

A Yes, I was.

[149] Q Did anyone ever specifically threaten you with prosecution?

A No.

Q If the law had gone into effect, would you have continued to perform abortion procedures on minors?

A No.

Q Would you have totally stopped doing abortion procedures in Massachusetts if the law had gone into effect?

A No. On minors, I would have.

Q To what extent are you involved in counseling at Parents Aid Society?

A To a minimal extent. I have sat in on various counselors and have listened to their counseling from a medical standpoint. I occasionally get involved with counseling if there seems to be a specific problem with the patient.

Q Do you have control over the medical policy at Parents Aid Society?

A Yes, I do. I am medical director of Parents Aid Society.

Q Do you have control over the counseling policy?

A From a medical standpoint, yes, I do.

Q Have you reviewed the counseling policy from time to time?

A Yes, I have.

Q Approximately how many minor patients have been patients of yours at Parents Aid Society in Boston?

[150] A It is hard to give a specific number. An approximate percentage, I would say, would be about 30% of the patients.

Q What procedure is utilized with these patients to obtain an informed consent?

A Well, as with any patient, the procedure is explained to them, the inherent risks are explained, and it is ascertained whether they understand the procedure and the inherent risks.

Q Are the options between continuing pregnancy and abortion discussed with these minors?

A Most certainly.

Q About how long is the counseling session?

A About two hours.

Q Is this normally conducted by you or some other person?

A Normally, not by myself.

Q Who are the individuals that do most of the counseling?

A In the Boston Parents Aid Society it would be either Mr. Bill Baird or Marilyn Morrissey, an R.N., a registered nurse.

Q Do you then see the patients after they have been counseled?

A Yes, I do. And in terms of counseling, I go through the procedure specifically with each patient prior to the procedure to make sure they understand what is going to happen.

Q Do you describe the procedure to the patient in each step?

[151] A Yes, I do, prior to performing each step.

Q Up to how many weeks are abortions performed at Parents Aid Society?

A Twelve weeks gestation.

Q Are you the only physician who performs abortions there?

A Yes, in Massachusetts.

Q If the patient has any difficulty during counseling, do you ever counsel the patient extensively yourself?

A Yes. I have had occasion to do so, although it is not common.

Q Would the patients in general — do they come through counseling understanding the procedure?

A Yes, they do. I might point out that if they do not, the procedure is not performed until it is felt that the patient does understand the counseling.

Q Are any patients ever turned away?

A Yes.

Q Under what circumstances are they turned away?

A Well, there might be a specific medical problem that is a contra-indication to performing the procedure or perhaps a problem with the patient's anxiety being too great a level to perform the procedure.

Q Are there any medical reasons you know of for denying an abortion to a patient under the age of 18?

A Yes.

[152] Q A medical reason for denying it?

A Are you asking me are there medical reasons for turning a patient away who is under 12 weeks gestation?

Q I left out a clause in my phrasing. Are there any medical reasons for denying abortions to all patients under 18 who can not get parental consent?

A Yes, such as an orthopedic deformity that would not allow the patient to be placed on the gynecological table in the proper position, or severe asthma, severe epilepsy. There are other medical reasons. These are rare.

Q Is it your practice to perform abortions for patients who request them unless there are these contra-indications?

A That is correct.

Q Do you understand this to be consistent with acceptable national standards?

A Yes, I do.

Q Which organizations promulgated those standards?

A The American College of Obstetricians and Gynecologists have promulgated such a position.

Q Is this position consistent with the American Medical Association's standards?

A Yes, it is also consistent with the American Medical Association's standards.

Q Do you understand it to be consistent with the Supreme Court's position?

[153] A Yes, I do.

MR. BEHAR: Objection.

JUDGE ALDRICH: We will take it merely as to his good faith understanding.

Q Does unwanted pregnancy pose any medical problems for minors under age 18?

A I'm sorry. Would you repeat that?

Q Does unwanted pregnancy pose any medical problems for persons under age 18?

MR. BEHAR: Objection.

JUDGE ALDRICH: Does the fact that it is unwanted make it a special medical problem? Is that what you mean?

MR. LUCAS: Perhaps I should eliminate the term "unwanted".

Q Does pregnancy under age 18 pose any special medical problems to those individuals as opposed to older persons?

A Not as opposed to older persons, no.

Q Does going through pregnancy — is that more serious for a person under the age of 18 than it is for a person who older?

A There are sometimes — statistically, there are more complications for a minor to go through a pregnancy, although I would not say these are really significant.

Q Have you ever discussed with minor patients their feelings [154] on the difficulty of obtaining parental consent?

A Yes.

Q What are some of the reasons patients give for being unable to or unwilling to get parental consent?

A The most common reason is fear of parental repercussion.

JUDGE ALDRICH: Parental what?

THE WITNESS: Fear of repercussion that would follow from informing their parents.

Q What are some of the other fears that minors under the age of 18 have in connection with contacting their parents? What types of repercussions?

A Sometimes physical and sometimes fear of literally being not allowed to live in the home any longer, and often simply being afraid to tell their parents.

Q Do you ever encourage minors to discuss their pregnancy with their parents?

A Yes. All patients are encouraged to discuss the abortion decision or pregnancy with anybody whom they wish to confide in.

MR. REYNOLDS: I object to that answer as not being responsive.

JUDGE ALDRICH: Well, it may stand.

Q I think the question is whether you ever refer patients to discuss the problem of pregnancy with their parents.

[155] A My answer would be yes.

Q Are there ever affirmative reasons for the parents' sake why the parents should not be told?

MR. BEHAR: Objection.

JUDGE ALDRICH: What is your objection?

MR. BEHAR: He has just given what the minor has told him. We do not have the parents in this picture at all.

JUDGE ALDRICH: So you object to his qualifications to deduce from his talking with the minors what might be the parental situation at home?

MR. BEHAR: That is right.

JUDGE ALDRICH: All right. Sustained. But if you were going to question the witness' good faith, he may answer that question.

MR. BEHAR: I don't understand. Good faith as to what?

JUDGE ALDRICH: As to his conduct. I believe you do not approve of his conduct. Am I wrong?

MR. BEHAR: I don't approve of the way certain things are done.

JUDGE ALDRICH: I deduced that. If I am wrong, that is that.

MR. BEHAR: No, you are correct.

JUDGE ALDRICH: All right. Then the witness [156] may answer on the issue of good faith.

THE WITNESS: Can the question be repeated?

MR. LUCAS: Would you read the question?

(The question is read.)

THE WITNESS: There are reasons why parents should not be told. You are asking me whether there are reasons for the parents' sake.

Q Do you sometimes discuss with patients the impact of the pregnancy on their parents, if their parents knew about it?

A Yes.

Q Do you encounter instances where there would be an adverse impact on the parents?

A In the opinion of the patient, yes.

Q What are some of the types of situations you have encountered in discussing the impact on the parents?

A That the parents' faith in the patient would be destroyed. It is difficult for me to differentiate between your phrasing "for the parents' sake" and "for the patients' sake". They are often one and the same as presented to me. I don't know if I am answering your question.

Q By withholding consent for the sake of the parents, what I mean is in the interest of protecting the parents from adverse consequences as opposed to the minors' interests. Do the minors ever want to withhold consent out of [157] thoughtfulness towards their parents?

A Yes.

Q Are there instances in dealing with minors where you feel that informing the parents would be disruptive of the family?

A Absolutely.

Q In what way do you think the family would be disrupted in these instances?

A As I mentioned before, there are times when the patient feels she would literally be thrown out of her home or that there are physical threats that she would undergo if her parents knew, and psychological damage to her parents in the patient's opinion.

Q Can you think of any rational reason for requiring the consent of both parents?

MR. REYNOLDS: Objection. It is far too broad.

JUDGE ALDRICH: He may answer.

A No.

Q Can you think of any rational psychological reason for requiring the consent of both parents for all minors under the age of 18?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

A No.

JUDGE ALDRICH: The answer may stand.

[158] Q Do you understand the law that was to go into effect in November would give either parent a veto over whether the minor had an abortion?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: I didn't understand a word of that question.

Q Do you understand that the law that was to go into effect on November 1st as giving either parent an absolute veto over whether the minor obtains an abortion?

MR. REYNOLDS: Objection.

JUDGE ALDRICH: Excluded.

Q Is group or individual counseling done at Parents Aid Society?

A Usually group.

Q Are there instances when adults are in the counseling procedure with minors?

A Are you talking about in the procedure or in counseling?

Q In the counseling itself.

A Yes, there are.

Q What is the reason for having both adults and minors together during group counseling?

A I don't see what the reason is for why not.

Q Could you explain what the reasons are for it?

A People are people. I don't see where age enters into this.

[159] Q Are the minors ever embarrassed by being in a counseling session with adults?

A It might occur. It is not common to my knowledge.

Q Can you think of any reason why minors and adults should not be in counseling together?

A No.

Q Have you had complication in treating abortion patients at Parents Aid Society?

A No major complication, no.

Q Have there been any hospitalizations that you know of?

A No.

Q What do you do about the possibility of needing to admit patients for emergency treatment after the procedure?

A If it were necessary, we would simply take the patient to an emergency room of a good hospital, and if it were a bona fide emergency, I am sure they would be admitted.

Q You mentioned that sometimes patients are turned away. At what point in the process of going through the abortion center are the patients turned away?

A It could be at any point. It could be right up to the time I am explaining things to the patient in the treatment room.

Q At what point is the patient finally and irrevocably accepted as a patient you are going to do the abortion on?

A When she is in the treatment room and I feel there [160] is no contra-indication to the procedure.

Q Are the patients finally accepted just on the basis of their original phone call?

A No.

Q Have you ever encountered instances where parents were trying to coerce a minor into having an abortion?

JUDGE ALDRICH: I think this would be a good place to suspend. We will resume the testimony tomorrow morning at 9:30. In the meantime, we will see counsel in the lobby with respect to a motion that has been filed.

(Whereupon the hearing was recessed
to Tuesday, December 31, 1974,
at 9:30 A.M.)

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DECEMBER 31, 1974.

[2] MR. LUCAS: The plaintiffs are prepared to resume with the testimony of Dr. Zupnick.

JUDGE ALDRICH: First off, I will make a short comment. I read the transcript last night. There are a couple of very minor corrections. There may be more, but these are the two that I noted.

On Page 5, line 18, the word "now" should be "not". On Page 52, line 11, it presently reads "rising percentage" followed by a dot and that should read "rising percentage," and then "period" and then a dot.

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GERALD ZUPNICK (Resumed)

DIRECT EXAMINATION BY MR. LUCAS (Continued)

Q For the record, would you state your name again and your association with Parents Aid Society?

A Gerald Zupnick, medical director, Parents Aid Society.

Q Does Parents Aid Society receive patient referrals from other clinics in the city and in the area?

A Yes, to my knowledge.

Q What are the facilities that make such referrals?

A Pre-Term sends us patients and Charles Circle Clinic.

Q Do you know the reason why some of these patients were sent? A What I have been told usually is that these have been minors who do not have parental consent or patients who [3] do not have the usual fee for the procedure.

Q As far as you know, have any other abortion centers or clinics been treating minors without consent prior to the restraining order in this case?

A In the State of Massachusetts?

Q Yes.

A Not as far as I know.

Q Are any other medical procedures performed at Parents Aid Society?

A Yes, the standard gynecological office procedure is performed. There is contraceptive advice. There is the insertion of I.U.D.'s, prescribing oral contraceptives, venereal disease diagnosis, the usual gynecological procedures.

Q Are there any surgical procedures involving cutting done there?

A No.

Q Would you characterize a first trimester aspiration abortion as surgical or medical or does it make any difference?

A It is a matter of semantics. I have heard it called both.

Q Have you had occasion to evaluate the counseling by paramedical personnel in your experience doing abortions?

A Yes.

Q Are you satisfied with the counseling that is done at Parents [4] Aid Society when the patients are presented to you?

A Yes. I think it is excellent in comparison to what I have seen.

Q What have you seen at other facilities?

A I have seen individual and group counseling. I have seen a full range of quality counseling.

Q Have you found any particular credentials were necessary to qualify a person for doing good counseling?

A No. I think good on-the-job training can properly prepare a person for counseling.

Q Why do you not think that particular credentials are important?

A I just don't feel it is necessary for this procedure. I think you could train a person adequately to counsel for an abortion without going through formal university training, which is what I assume you are referring to.

Q Yes. Did you bring with you any of the sample forms for Parents Aid Society?

A No.

Q Who takes the patient's history at Parents Aid Society?

A It can be any one of several people from the receptionist to a nurse to a volunteer who might be there that day, but it is usually trained para-medical personnel.

Q Do you check the patient's history yourself?

A Yes, I do.

[5] Q What do you look for on the history form?

A What I am particularly interested in is any contraindications in performing the first trimester abortion.

Q How do you determine if the patient is pregnant and how far along she is?

A Well, the pregnancy test on the patient is first done. When the patient comes in to see me, I examine her in the usual bi-manual procedure, which is the accepted procedure for determining size of pregnancy.

Q Have you in your experience ever encountered any minor patients whom you did not think were capable of giving an informed consent?

A No, not incapable of giving informed consent.

Q Do you think that any are screened out before they get to you?

A It is possible. It is hard to know who is screened out before they get to me.

Q Under what circumstances would you think a minor under 18 was not capable of giving informed consent?

A Some form of mental retardation perhaps.

Q Are there many other circumstances that would disqualify them from giving an informed consent?

A For some reason like inability to understand the consent form, but that is very rare. I personally haven't encountered it.

[6] Q What is your understanding of what constitutes an informed consent?

A It is informing the patient of what the procedure is that they are about to go through and its possible complications and ramifications.

Q I believe you testified that there are some patients who do not want to tell their parents, and that is, of course, what this lawsuit is about. What reasons are sufficient to you from a patient for not wanting to advise their parents?

A Any reason. I think any patient is entitled to his or her privacy.

Q Do you cross-examine the patient to try to ascertain the underlying basis for not informing their parents, for not wanting to tell them?

A I wouldn't say that I cross-examine in a courtroom sense, but I will sometimes ask. As I believe I have stated before, we always try to encourage a patient to be as open as possible about the abortion decision with anybody whom they wish to confide in, but it is not forced upon them.

Q Do you also have patients who are over the age of 18 at Parents Aid Society?

A That is correct.

Q Do they ever not want to inform their parents or their children about their going through an abortion?

MR. REYNOLDS: Objection. That is not part [7] of this case.

JUDGE ALDRICH: Excluded.

Q Does Parents Aid Society have any license from the State Department of Health to operate a facility?

A Not to my knowledge.

Q Do you understand that such a license is legally required?

A Not to my knowledge.

Q Do you personally feel that you are complying with the guidelines of the United States Supreme Court decision in operating this facility?

MR. BEHAR: Objection.

MR. LUCAS: This goes to intent.

JUDGE ALDRICH: On the matter of good faith only.

Q You may answer.

A Yes, I believe I am.

Q What type of psychological reactions do the patients have after the procedure?

MR. REYNOLDS: Objection.

JUDGE ALDRICH: What is the objection?

MR. REYNOLDS: I don't know that the doctor is qualified to discuss psychology.

JUDGE ALDRICH: Well, we haven't any evidence to base his opinion on, apart from his qualifications as a medical doctor, so you had better ask some more [8] questions.

Q Can you describe the patient's reactions after the abortion procedure?

MR. REYNOLDS: Objection. We ought to establish if he sees the patient after.

JUDGE ALDRICH: I think so, too.

Q Do you see the patient after the procedure?

A Yes, I do.

Q Are you in the room immediately after the completion of the procedure?

A Yes, I am.

Q To what extent do you see the patient thereafter and before they leave?

A I usually see the patient again in the recovery room on one or two occasions to see how they are doing, and the patients are usually checked by me before they leave to make sure that everything is okay.

Q Do you talk to them immediately after the procedure?

A Yes, I do.

Q Would you describe what their reactions are when you talk to them after the procedure?

A Most often it is relief at the completion of the procedure and surprise as to the simplicity of the procedure.

Q Do you ever encounter reactions of guilt or hostility after the procedure?

[9] A Occasionally, but it is very rare.

Q What percentage of patients does Parent Aid Society follow up as far as you know?

A Well, this a guess. It is about 70 —

MR. REYNOLDS: Objection to the guess.

JUDGE ALDRICH: Sustained.

Q Could you give an approximation from your experience?

A Yes.

Q What would the range be?

A I would say about 75%.

Q What type of follow-up is provided for the patients?

A Well, when a patient is counseled for the procedure they are asked to think about a form of birth control to use. So afterwards, we try to provide that form of birth control to make sure everything is all right post-abortion.

MR. REYNOLDS: I don't think this case is concerned with birth control.

JUDGE ALDRICH: I would be happy to have this stipulated all around.

MR. LUCAS: I would agree with that.

Q May I ask you about the follow-up with regard to possible complications from the abortion procedure. What type of short and long-range follow-up is provided for the patients?

A Well, most complications usually fall into the category of what you are describing as short-range. The patients [10] are checked afterwards simply to make sure everything is medically okay post-abortion.

Q What does a patient do if she has some type of fever or other complication the day after the procedure or two days after the procedure?

A The patient is given an instruction sheet by Parents Aid Society which lets the patient know how to contact us on a 24 hour basis and we are available for any patient on a 24 hour basis.

Q How many days a week do you normally spend in Boston?

A Two.

Q Who handles the patients when you are not here if they need any follow-up?

A Usually Dr. Inker or any one of a number of several cooperating physicians who the clinic feels is good. But I should state that this has been necessary in my experience since we have been in Boston only one time, and it was primarily necessary for reassurance in an anxious patient. Most complications are handled telephonically. It is usually a matter of reassurance of the patient.

Q Have you had any instance of patients being hospitalized after the abortion procedure that you know of?

A None.

Q Do you find it more difficult or easier to perform abortions physically on minor patients under 18?

[11] A Physically?

Q Yes.

A It is.

Q Just in general, not just physically?

A Well, if I were to break it down, I would say that in a younger patient, who is generally nulliparous, who has not been pregnant before, that is, it is slightly more difficult to dilate the cervix. I would say not say significantly so. However, psychologically I would say it is a lot easier usually to

perform the procedure because most younger patients do not have the usual stigmata of illegal abortion in thier heads.

MR. BEHAR: Objection.

JUDGE ALDRICH: Overruled.

THE WITNESS: Most younger patients just never had to deal with the problem of obtaining a criminal abortion.

MR. REYNOLDS: I object to that.

JUDGE ALDRICH: I think the original answer answered the question.

MR. LUCAS: We would like to put into evidence a set of standard forms used at the clinic.

(Standard forms used at Parents Aid Society marked Plaintiffs' Exhibit 10 for identification.)

Q Would you state for the record what this set of forms [12] consists of?

A Well, the first sheet here is the confidential information form, which has the patient's name, address and telephone number, which to my understanding are filed separately from the medical part of the chart.

The next page I have is the history and surgical record, on top of which is a very brief history and is essentially the surgical record which I fill out of the procedure.

The next page is the patient's questionnaire, which is essentially the basis of the patient's history.

The following page is the informed consent to the procedure. This is for the patient to read over and to sign authorizing Parents Aid Society to perform the procedure.

The next page is the instruction sheet to which I previously referred that every patient is given.

Q Are all of these forms provided to each patient at Parents Aid Society?

A Yes, to my knowledge they are.

Q Are these the same forms used at Parents Aid Society in New York also?

A Yes.

MR. LUCAS: We would like to move that these be admitted in evidence as the standard forms [13] utilized at Parents Aid Society.

MR. REYNOLDS: No objection.

MR. BEHAR: No objection.

THE CLERK: Plaintiffs' Exhibit 10.

(Plaintiffs' Exhibit 10 for Identification received in evidence.)

MR. LUCAS: We have no further questions of this witness.

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CROSS-EXAMINATION BY MR. BEHAR

Q I believe you stated that you are a contract physician?

A That is correct.

Q Is this an oral contract or a written contract?

A Oral.

Q With whom did you contract?

A Mr. Bill Baird.

Q Did you understand he had authority to enter into this contract?

A Yes, I did.

Q In what capacity did he have this authority as you understood it?

A As clinical director of Parents Aid Society.

Q What are the terms of the oral contract that you have?

A Simply that I am to provide medical services for the Parents Aid Society for which I obtain a fee per patient.

[14] Q Has this fee been set in advance?

A It varies with the patient. It varies with the amount the patient pays.

Q Do you receive a salary from Parents Aid Society?

A No.

Q Could you tell the Court how you are reimbursed?

MR. LUCAS: We object to any extensive inquiry into the administrative and financial aspects of Parents Aid Society because this is the other lawsuit Mr. Behar keeps trying to try here.

JUDGE ALDRICH: We are interested in the doctor's standing. To the extent the inquiry is related to that, it seems to me to be quite relevant. How far he will be allowed to go into it is another question.

Q Would you answer the question?

A Would you repeat the question, please?

Q Would you explain to the Court how you are reimbursed?

A I receive a fee per patient.

Q In the situation of an abortion how is the fee determined?

A It is usually one-third of the fee that the patient pays, but not always because there are some patients who pay a lesser amount and some patients are free, and I don't get anything for these patients.

Q Do you receive fees for anything else besides abortions?

A When I provide other services, such as birth control [15] work.

Q Are those fees a percentage of the patient's charge?

A Yes, they are.

Q Could you indicate what the various charges are for the services of Parents Aid Society?

A Are we going into birth control now?

Q For the various medical services performed there under your directions.

JUDGE ALDRICH: I think we will stick to abortion.

Q Is there a maximum price for an abortion at Parents Aid Society?

A Yes. The abortion fee is on a sliding scale from the patient's ability to pay to a maximum of \$150.

Q In the case where \$150 is charged, what do you receive in that instance?

A Usually a third.

JUDGE FREEDMAN: Is that paid on a monthly basis?

THE WITNESS: No. It is paid on a daily basis. I am given a check at the end of the day.

Q What was the amount of the last check that you received from Parents Aid Society?

MR. LUCAS: Objection.

JUDGE ALDRICH: Why does it make any [16] difference how many he performs?

MR. BEHAR: I am not asking him how many. I am trying to get an idea of the financial benefits this plaintiff derives.

JUDGE ALDRICH: He told us that. In what way do you embroider what he already said?

MR. BEHAR: It is pertinent to the situation of the minors in this case having similar representation as these plaintiffs. We think there is a conflict of interest type situation that is inherent.

JUDGE ALDRICH: You have established enough of that already without any dollar sign for the argument. You may go ahead.

A I honestly don't recall the exact figure. I believe it was in the area of \$600.

Q You have received checks higher than that amount?

A Higher and lower, yes.

Q Does that constitute reimbursement for two days work?

A That is correct.

Q Do you perform —

JUDGE FREEDMAN: Is that for all services or strictly those relating to abortion services?

THE WITNESS: All services. But I should stipulate that I am primarily performing abortion services.

Q As a matter of fact, you do not perform any of the [17] contraceptive services any more, do you?

A On occasion I do. That is not my usual function.

Q That is the rare situation then?

A I wouldn't say rare, but it is not my usual situation.

Q Isn't it a fact that you hired a new physician just to perform the contraceptive services provided at Parents Aid Society?

A That is correct.

Q That was done to free you so you could devote your time to abortions, wasn't it?

A That is primarily correct.

JUDGE FREEDMAN: I would be interested, Doctor, in the number of abortions you performed — the percentage of those that incorporate fees of the maximum \$150 as opposed to those that are actually free.

THE WITNESS: As I said before, it is not always free or \$150. It is on a sliding scale basis. If you are asking me how many patients pay the total of \$150 fee —

JUDGE FREEDMAN: Yes. How many pay no fee on a percentage basis?

THE WITNESS: I would say probably about two-thirds pay the \$150 fee and probably about 15% are done for free, and then there is a scale in between on the other patients. I should state that these fees and these determinations are not

made by me. They are made [18] primarily by Parents Aid Society, and I am simply relying upon their integrity in my reimbursement.

Q Are you aware, Doctor, of any legal requirement in the Commonwealth that requires a physician to participate in the fee that is charged a patient for services?

A Not to my knowledge.

Q You indicated that you have encountered situations where there were reasons for not informing parents on the part of minors; is that correct?

A Where minors do not want to inform their parents, yes.

Q You said that in these situations there would be disruption of the family if parents were informed. Is that what you testified to?

A I believe I testified that there could be.

Q This was based solely on the representations to you by the minor; is that correct?

A I have to rely solely upon what any patient tells me.

Q You did not talk with the parents? You did not make any effort to contact the parents?

A No.

Q Your testimony then as to disruption of the family is based solely on the representations of the minors to you?

A The way I accept most patient's histories or questions.

Q And if the minor was not telling the truth, then the reasons for your testimony would not exist; is that right?

[19] A Maybe, maybe not. There might be reasons that are not given. I don't know. The doctor has to accept any patient's history on the basis of what he feels that patient is telling him.

Q Do you always feel that your patients are telling you the truth?

A Not always, no, but essentially my training is to ferret out what I think is the truth.

Q Sometimes do you have the feeling that a patient is telling you what you want to hear?

A No I don't think so. I don't see what the reason for a patient to do that would be.

Q Well, in the referral situation that you mentioned you indicated that one of the reasons for referrals was that it was a parental consent requirement at various other clinics.

A Correct.

Q Wouldn't a reason that might be offered to you by a minor that they know you are going to let them have the abortion without parental consent?

A No question. We do not require parental consent under any circumstances. Why should the patient lie to me?

Q A minor can come in for any reason and not inform the parents?

A That is correct.

Q Have no reason at all, just say, "I want an abortion", and [20] not give a reason?

A You are asking if a patient can request an abortion from me for any reason whatsoever? Is that your question?

Q Yes.

A The answer is yes.

Q You make no effort to follow up on the parents in this situation?

A I do not attempt to call the patient's parents, no, no more that I would attempt to call the parents of a 40 year old patient.

Q Did you continue your formal education beyond 1970?

A Not beyond 1970.

Q Are you certified by any board?

A No, I am not.

Q Are you affiliated with any hospital in Massachusetts?

A No, I am not.

Q What about New York?

A No.

Q No hospital affiliation?

A No.

Q Are you the only medical director Parents Aid Society has ever had in Boston?

A In Boston, yes, to my knowledge.

Q When did you first assume your duties as medical director?

A In October, 1973.

[21] Q Do you hire the counselors or the paramedics at Parents Aid Society?

A No, I don't do any hiring.

Q Do you know who does?

A I am not sure who does the final hiring, no.

Q What are your duties generally as medical director, as you see them?

A To make sure that the medical procedures in the center are done correctly and that patients are being informed correctly and that everything medically is up to par.

Q That is the counseling too?

A Yes.

Q But you don't hire the counselors?

A No, I don't.

Q Do you participate in the decision to hire them?

A I have occasionally been asked for my advice, yes.

Q Who made the decision to utilize the group counseling method?

A I don't know.

Q Did you?

A No.

Q Was this in existence before you got there as medical director?

A Yes.

Q Were abortions being performed at Parents Aid Society before you became medical director?

[22] A To my knowledge, yes.

Q Do you know the doctor or doctors who were doing that?

A I know two of them, yes.

Q Isn't it a fact, Doctor, that the group counseling session is really a convenience to your schedule? Isn't that why it was instituted?

A No.

Q Well, you only spend two days here in Boston; is that right?

A That is correct.

Q If counseling was to be done individually, it would require far more extensive time, wouldn't it?

A More extensive time or more people being involved doing the counseling.

Q So in a sense this group counseling method is ideal for your particular travel schedule, isn't it?

A Not necessarily.

Q Well, as I understand it, you have patients come in in groups, right?

A That is correct.

Q How large are these groups?

A Usually from one to eight patients, but I would say on an average of four to five.

Q They could go higher than eight and as many as ten?

A That would be unusual, but it has occurred, yes.

Q And then immediately following the counseling do the [23] patients then see you?

A Yes.

Q And if the patients have to come in one at a time for a two hour session, it would be very difficult for that all to take place in one day?

A I only see one patient at a time. They could be scheduled in whatever manner. They are available for me to see one at a time. That is all I see.

Q Who made the determination to have the counseling and the operation take place on the same day?

A I don't know. This was already in existence.

Q Did you have any medical reservation about that?

A No.

Q Is there any attempt made to limit the group to, say, solely minors or solely adults?

A Not to my knowledge, no.

Q Do you think it good medical practice to do that?

A To do what?

Q To limit the groups to just minors, on the one hand, and adults, on the other hand.

A Not necessarily, no.

Q The groups that you are talking about range in a variety of ages; is that right?

A Yes.

Q No attempt is made to treat minors uniquely or adults [24] uniquely; is that right?

A Well, are you asking me — would you clarify that question?

Q You do not set up your group counseling sessions to address solely minors, on the one hand, and adults, on the other hand, do you?

A No.

Q Do you discuss with the minor the reasons for refusal to inform their parents of her situation?

A I believe this is taken up with the patient.

Q Do you personally do it?

A Occasionally.

Q Is there any particular reason why you might do it in some instances and not in others?

A No. It is usually my medical judgment.

Q Do you ever tell the minor, "I think it would be a good idea for you to inform your parents"?

A Yes, I have told that to minors.

Q Do you actively encourage parental involvement?

A As I stated before, we encourage any involvement with whom any patient would wish to confide. We feel that support in this kind of decision is beneficial.

Q You do not press it?

A No, it is not pressed.

Q If the patient gives a reason that she doesn't want to inform her parents, it is left at that?

A Well, the reason might be gone into, but a patient's right to privacy is respected.

Q This right to privacy, is this a legal opinion you have been given?

A A legal opinion?

Q Yes.

A This is my feeling.

Q It is your own personal feeling?

A That is correct.

Q Well, can you estimate the percentage of patients that are minors who receive abortions at Parents Aid Society? Are you able to do that?

A I would say about 30%.

Q Can you give any estimate to the Court as to how many have not informed their parents?

A It would be guessing at best because I don't know, but I would say half and half.

Q Half and half. Does Parents Aid Society have a reputation as being a place where no questions will be asked about parental involvement?

A Questions are asked.

Q Does Parents Aid Society try to cultivate the reputation that if a minor comes in and does not want to inform her parents she is not going to be given any hassle?

[26] A Yes.

Q You, yourself, do not typically counsel the groups, do you?

A No.

Q This is left up to whom?

A Usually Mr. Baird or Marilyn Morrissey.

Q Did you hire either of those individuals?

A No.

Q Do you have the authority to fire either of those individuals if you were dissatisfied with their work?

A No, I don't.

Q After the counseling sessions are the surgical procedures then performed?

A Yes. Blood work or lab work might be done before or after the counseling, but usually after the counseling procedure is performed.

Q Could you describe to the Court exactly what the procedure is medically for the first trimester abortion?

A Certainly. The patient is already in the room when I come into the treatment room with a nurse. I talk to the patient and go over her medical history with her, and go over the procedure with her, and try to ascertain her anxiety level. If I feel she has to be calmed down, I will attempt to calm her down.

The patient is then placed into the dorsal lithotomy position.

[27] Q Would you tell the Court what that position is?

A The patient's legs are placed onto knee rests where they drape over the patient's legs so the exposure of the vagina can be accomplished. The perineal is prepped with Betadine solution, a surgical soap, and a speculum is inserted into the patient's vagina.

Q What does that look like?

A A speculum is generally described as a duck bill shaped double shoehorn. It is to provide exposure to the vagina. It opens the labia to the vagina. The vagina is then prepped with the same Betadine solution and anesthesia is then injected into the antero lip of the patient's cervix where the tenaculum is going to be placed so the patient doesn't feel the pinch of the tenaculum.

Q That being what?

A That is an instrument to grasp the cervix. The remaining anesthesia is then injected into the patient's cervical and paracervical areas. The patient's uterus is then sounded, which means the depth of the uterus is determined.

The amount of dilation is determined. Dilation is accomplished with Pratt dilators. After the dilation, the vacuum tip is attached to the aspiration machine.

Q What does that look like, this machine?

A It is a stainless steel piece of equipment rectangular [28] in shape and approximately three feet high and two feet wide and a foot and a half in depth with two collection bottles at the top of the machine to accomplish the vacuum aspiration.

The vacuum tip is then inserted into the patient's uterus and the vacuuming is accomplished.

After I feel that the products of conception have been removed, the uterus is curetted to ascertain whether all the tissue has been removed, and if I feel all the tissue has been removed, then I will aspirate for approximately another 15 seconds just to make sure there is no other debris remaining. That is essentially the procedure.

Of course, before each step, the patient is told what is going to happen and what she is going to feel, and whether she is ready for the next step.

Q When the patient walks into the operating room, typically that is the first time she has met you?

A Usually, yes.

JUDGE FREEDMAN: How long does the typical abortion procedure last?

THE WITNESS: The average technical part of the procedure is five to seven minutes.

Q When the patients come in, do they frequently have questions they ask you?

A The patients occasionally have questions, yes.

[29]Q What kind of questions do they ask?

A The most common one is, "How much does this really hurt?" Most commonly the questions pertain to anxiety about the specific procedure.

Q Is this a particularly anxious moment for the patients?

A I would say it is an anxious moment.

Q And it is clearly an anxious moment for them before the counseling, isn't it?

A Yes. I would say before counseling the anxiety level is a lot higher.

Q But there is some that remains in the patients even after the counseling and when they are with you in the operating room?

A Yes, as with any medical procedure.

Q Do you ever have to go over things with the patient that have already been explained to her?

A Occasionally, yes.

Q This is after the counseling session. There are still questions as to what is going to happen to the patient?

A Well, the questions usually are not what is going to happen because this has been explained to them, but usually pertain to the amount of pain involved. This seems to be the patient's most common anxiety.

Q Do you have Exhibit 10 in front of you, Doctor, the forms?

A The forms, yes.

[30] Q With reference to the consent form, did you write it?

A No, I did not.

Q Do you know who did?

A No, I don't.

Q How did it come to be used?

A It was in use when I came to the Parents Aid Society.

Q Did you approve it when you assumed your duties?

A Yes, it seemed in order to me. I am not a lawyer.

Q Did you ask that a lawyer look it over?

A It was my understanding that a lawyer had helped draft this.

Q Is there any reason why Parents Aid Society is not mentioned on this form?

A Not to my knowledge.

Q To your knowledge, there is no reason why?

A Not to my knowledge, no.

Q Do you understand that when you perform a first trimester abortion upon a minor without the parents' consent you are civilly liable to that minor?

A I don't understand what civil liability means.

Q In a tort suit for, say, battery upon the minor, civilly liable to that minor.

MR. LUCAS: I object. There is no basis for drawing that conclusion. It is a legal opinion.

JUDGE ALDRICH: I think the question is [31] reasonable enough. Why not explain it in lay terms?

MR. BEHAR: Well, I will rephrase it.

Q When you perform an abortion upon a minor without parental consent, do you have any understanding as to whether you are subject to a suit by that minor, a lawsuit?

A Anybody could sue me.

Q But for the reason that you are doing the procedure without parental consent. That is what I mean.

A Specifically because I am doing the procedure?

Q Yes.

A No.

Q You do not have that understanding?

A No.

Q Do you have the understanding that the parents of the minor could sue you for the sole reason that you performed the abortion without parental consent?

A I am sure they could sue me.

Q Even if you do the procedure well?

A Sure. They can sue me. Anybody can.

Q You run that risk every time?

A Yes.

Q You deliberately have decided to run that risk?

JUDGE ALDRICH: I don't think, counsel, that you and the witness are meeting on the same track.

MR. BEHAR: I thought we had reached an [32] understanding.

JUDGE ALDRICH: You did and then you got away from it.

Q Do you understand that a parent can sue you civilly merely because you performed an abortion upon their daughter without their consent?

MR. LUCAS: Objection, on just one point. Perhaps the question should distinguish between suing and recovering.

JUDGE ALDRICH: It certainly should. I thought counsel had grasped the point once.

MR. BEHAR: Between suing and recovering?

JUDGE ALDRICH: The witness made it very clear that anybody could sue him for anything. You haven't got him outside of that area.

Q Do you understand that a parent could sue you and recover civil damages, money damages, merely because you

have performed the operation upon their daughter without their consent?

A I don't believe they would recover anything.

Q You don't believe they would recover anything?

A No. I don't think I am doing anything wrong.

Q Has a minor ever given a reason for not informing her parents that you found unacceptable?

JUDGE ALDRICH: What was that question?

[33] Q Has a minor ever given a reason for not informing her parents that you found unacceptable?

A No.

Q If a minor did not want to tell her parents she was pregnant merely because she did not want them to know she had had intercourse, would that be a sufficient reason in your judgment for not informing the parents?

A If she had a specific fear about informing them of intercourse, yes, I would find that adequate.

Q Have you ever refused to perform an abortion upon a minor unless she obtained parental consent?

A No.

JUDGE FREEDMAN: Have you ever refused to perform an abortion for any reason?

THE WITNESS: Yes, often.

Q For medical reasons?

A Usually.

Q Such as what?

A Severe uncontrolled epilepsy, severe uncontrolled asthma, an orthopedic difficulty that would not allow the patient to be placed upon the table, severe anxiety that can not be overcome by our counseling or reassurance.

Q Do you instruct the counselors what to say during the counseling session?

A Well, I occasionally sit in on counseling sessions and [34] do make suggestions. I wouldn't say that I sit down and train the counselors.

Q Who does?

A To my knowledge, Mr. Baird does.

Q It is your view, I take it, that a minor is entitled to an abortion on request for any reason?

A Yes.

Q In your view then, a minor should be free to do with her body anything she wants?

A I didn't say that.

Q Well, would you say that?

A No.

Q Did you say that during the course of the deposition we held in this case?

A I don't believe so. I believe you questioned me as to specific medical procedures that I would think minors would need consent on.

Q Do you remember being asked this question:

"Q Do you think a minor should be free to do with his or her body as he or she wants?"

And the answer you gave was, "Yes".

Do you recall that?

A I assume that if it is in the deposition, I said it.

Q Well, I am reading from it.

A What you are asking me now is whether a minor [35] can do with her body, medically or surgically, what she wants?

Q Would you answer different in this situation?

A Yes.

Q Is there any surgery in your judgment that a minor should not be able to obtain without parental consent?

A Yes.

Q Such as what?

A A craniotomy, a tubal ligation.

Q Is there any reason why these procedures would require parental consent in your judgment?

A The extreme seriousness of the consequences.

Q Is it your testimony that in these situations a minor would not appreciate the consequences?

A Yes.

Q Yet in the abortion situation is it your testimony that a minor would appreciate the consequences of that procedure?

A Yes. I think the consequences are not in the same realm of severity.

Q Have you ever consulted a minor's family doctor regarding the procedures you perform at Parents Aid Society?

A Are you talking about prior to the procedure?

Q At any time.

A Not usually, no.

Q Have you ever found a situation where it would have been [36] desirable to talk to a minor's family doctor?

A Not that I can recall.

Q Did you sign an agreement or enter into any agreement making you medical director?

A Yes. I signed a one statement acceptance of the position.

Q Do you recall what it says basically?

A Basically it says, "I hereby accept the position of medical director of Parents Aid Society."

Q Who asked you to present such an agreement or sign such an agreement?

A Mr. Baird.

Q Did you understand he had authority to make that request of you?

A That was my understanding, yes.

Q In his role as director?

A Yes.

Q Is the surgical equipment used at Parents Aid Society owned by you or by the Society?

A By Parents Aid Society.

Q Do you have any data as to the youngest adolescent that has received an abortion at Parents Aid Society in Boston?

A As I stated during the deposition, I believe, I can specifically recall aborting a 14 year old patient.

Q How many abortions are done in an average week, if it is [37] possible to give an average figure?

A It varies. There is a tremendous variation. In some weeks I have done two abortions and in some weeks I have done 30 abortions.

Q Suppose a patient comes in on Saturday and wants to have an abortion. Will she be given one on that day?

A No. The normal days for performing abortions in Boston are Thursdays and Fridays.

Q She would have to wait five days to get that procedure; is that right?

A Unless she wanted to go to another facility, yes.

Q What is your on-call capability when you are away from Boston relative to situations here?

A It is a 24 hour capability. I am available by a paging device.

Q How does it work?

A Well, our office here can contact our office in New York, who could page me.

Q About how many times a week is that done?

A For patient purposes?

Q Yes.

A In other words, how many times am I paged from Boston?

Q For patient purposes.

A I would say an average of two to three times a week.

[38] Q What sort of situations might occasion these calls?

A Usually a patient's anxiety about the amount of post-abortion bleeding or cramps or low grade fever.

Q Do you know whether these calls relate to minor patients as opposed to adults?

A No, any patient.

Q Minors or adults would be represented in these calls?

A Yes.

Q Do you deliver babies, Doctor?

A No, I do not.

Q Are babies delivered at Parents Aid Society?

A Not to my knowledge.

Q Have you ever delivered a baby in Massachusetts?

A Not in Massachusetts.

Q Is your sole source of income from medical procedures you perform at the Boston and New York Parents Aid Society?

A No.

Q Do you have any other medical source of income?

A I occasionally see other patients, but it is not usual.

Q So a substantial amount of your income is derived from the services you perform at Parents Aid Society?

A The medical part of my income, yes.

Q Have you, yourself, had specific formal training in counseling?

A I went to medical school. That involves quite a bit of training in counseling.

[39] Q Beyond medical school, have you had anything of a formal nature?

A No.

Q Are menstrual abstractions performed at Parents Aid Society?

A Yes.

Q Would you tell the Court what that procedure involves?

A Yes. If a patient has not had a period anywhere up to ten days from the time she should have had her period and has a negative pregnancy test, she can have a menstrual abstraction which is done for the sole purpose of allaying the pa-

tient's anxiety about possibly being pregnant, and the menstrual abstraction consists of extensive counseling before the procedure, making the patient aware of the fact that medically the procedure is not necessary, and that it is being done solely to allay her anxiety about possibly being pregnant.

Do you want me to specifically explain what a menstrual abstraction is?

Q No, I don't think that is necessary. But do I understand there has been no determination of pregnancy?

A We perform the pregnancy test.

Q You have to make sure the patient is not pregnant?

A That's right. When I do the procedure, I do it by manual examination to determine the patient's uterine size.

Q Do you perform this procedure upon minors without parental [40] consent?

A If they so desire, yes.

Q And the consequences of unwanted pregnancy do not exist in this situation, do they?

A I am not sure what you are asking.

Q Well, you made a determination that there is no pregnancy before you performed this operation; is that right?

A When the menstrual abstraction is performed, you can not know 100% there is no pregnancy. There could be a very, very early pregnancy in existence.

Q But implantation may not have occurred to trigger the test, is that what you are saying?

A The test is not necessarily triggered by implantation. It is the amount of HCG. in the urine which might not be present at that time.

Q You indicated you see patients in the recovery room; is that right?

A Yes.

Q How long do you spend with the patient in that situation?

A In the recovery room situation?

Q Yes.

A It is brief. I just essentially go in to see how the patient is doing.

Q How long does the patient spend in the recovery room?

A On the average of a half hour to an hour.

[41] Q So in a situation where you have, say, 15 surgical procedures to perform, do you, after each one, go into the recovery room? Is that routine practice on your part?

A It is not routine that I am performing 15 procedures.

Q Well, in situations where you have a large number to perform you indicated that there were those occasions?

A Yes. The day is usually broken up. Patients are scheduled in separate groups. I am not constantly going from one procedure room to another procedure room. There are breaks. It is usually groups of five patients.

Q What are the hours that you would see patients in a given day?

A Well, most patients are scheduled to start coming in at noon, sometimes at nine o'clock, but it depends on the patient load.

Q How late do you stay open?

A Usually until nine or ten o'clock at night, but again this varies with the patient load. We have been there much later. We finish up much earlier usually.

Q Have you been there as late as 2:00 A.M.?

A Yes.

Q In situations where minors were being treated at those hours?

A Well, the younger patients we usually try to treat earlier because of problems about returning home.

[42] Q Have you had any personal contact with the Attorney General of the Commonwealth?

A No.

Q Have you had any personal contact of any kind with any of the District Attorneys in the Commonwealth?

A Just with you.

Q I am not a District Attorney.

A Oh, I thought you were.

Q Do you make any attempt to determine that the patient is giving a true name?

A No.

Q Do you think that might be important if you had to have contact with the patient later?

A Well, we don't care about the patient's name. We care about the ability to contact the patient. The patient is told that it is very important where we might be able to contact her.

Q Are you aware that Mary Moe, II could not be contacted relative to a deposition in this case?

A No.

Q Are there any situations where the Parents Aid Society or you or any of the counselors think it advisable to contact the patient post-partally?

A Yes. It happens occasionally. I would say it is rare.

Q For what reason?

[43] A It happens so rarely that I can't really recall any specific reason.

MR. BEHAR: I have no further questions.

JUDGE FREEDMAN: During the course of an abortion procedure, do you do an uterine biopsy to determine malignancy?

THE WITNESS: No.

JUDGE JULIAN: During the aspiration of the embryo —

THE WITNESS: Of the products of conception?

JUDGE JULIAN: You call it the products of conception. Another name for it is embryo, isn't it?

THE WITNESS: Yes.

JUDGE JULIAN: Is the embryo attached to the wall of the uterus?

THE WITNESS: That is correct.

JUDGE JULIAN: When it is aspirated, does that mean it is torn away from the wall of the uterus?

THE WITNESS: Yes, you could say that.

JUDGE JULIAN: Is it physically attached by tissue to the wall of the uterus?

THE WITNESS: There is a connection between the products of conception and the uterine wall, a vascular connection.

JUDGE JULIAN: I am talking about the embryo [44] itself. Do you have an aversion to referring to it as the embryo?

THE WITNESS: No.

JUDGE JULIAN: Does bleeding follow?

THE WITNESS: Yes, usually.

JUDGE JULIAN: All right.

THE WITNESS: Excuse me, Your Honor. To further answer your question about malignancy, the products of conception are examined after each pregnancy to determine that there are certain breakdown possibilities in the products of conception that can lead to a malignancy, and these tissues are examined grossly to make sure that malignancy does not exist, but there are not biopsies performed per se.

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CROSS-EXAMINATION BY MR. REYNOLDS

Q Doctor, you used the term in your discussion with the Court and during the deposition and on your direct examination and also on your cross-examination "product of conception". We are all here products of conception, are we not, Doctor?

A Yes.

MR. LUCAS: May I object to any extended inquiry on this? This is far beyond the issues in this case.

[45] JUDGE ALDRICH: He may answer.

Q It is so, isn't it, that the stage of development that you are talking about is properly referred to otherwise than as the products of conception?

A I'm sorry?

JUDGE ALDRICH: I didn't get the question.

Q Is it properly referred to otherwise than as products of conception?

JUDGE ALDRICH: Is what?

MR. REYNOLDS: I was going to state it, Your Honor.

JUDGE ALDRICH: I'm sorry.

Q The tissues which you extract from the mother with the aspirator — in other words, it is called the embryo, isn't it?

A Yes.

Q And properly so?

A Yes.

Q Thank you. You said you recall an instance where you had aborted a 14 year old. Do you recall that?

A Yes, I do.

Q In the deposition you said that you knew she was unmarried or so far as you knew she was unmarried; is that so?

A That is correct.

Q You thought there might have been a case where you had [46] aborted a 13 year old. Isn't that so?

A Yes. As I stated, I didn't recall specifically, but I believe that I did.

Q In either of those cases did you have parental consent to perform the abortion?

A Well, in the instance of the 14 year old the patient's mother was aware and, as a matter of fact, spoke with several people at the center, including Mr. Baird, but no specific writ-

ten consent was acquired, but I know the patient's mother was aware of the procedure.

Q Do you remember when that was done?

A It was either late 1973 or early 1974.

Q It is the regular practice for the Parents Aid Society to obtain the written consent of a parent if the parent is available to sign?

A No. This is not our usual practice.

Q It is not your usual practice?

A That is correct.

Q Are you familiar with the generally accepted medical practice here in Massachusetts in regard to obtaining consent of at least one parent with regard to surgical procedures performed upon a minor?

MR. LUCAS: Objection. It has not been shown this is a medical practice. It could just as well be a habit or something that is advised by counsel or something [47] for the purpose of ensuring payment.

JUDGE ALDRICH: The question is whether he knows whether there is any practice.

THE WITNESS: No, I am not aware of that practice.

Q You are aware of the fact that some of the patients you abort come to you as a result of being referred to the Parents Aid Society from Pre-Term and Charles Circle; is that correct?

A Yes.

Q Doctor, your attention was called to Exhibit 10 — to one sheet of that exhibit, but there are several pages that make up that exhibit, and I know you have looked at it before. It is correct that on none of those pages is Parents Aid Society, Inc. identified? Isn't that so?

A I believe I looked at the pages during the deposition to examine for that specifically and I think the answer is yes, except by a telephone number on the instruction sheet.

Q Typically, when a patient presents herself to Parents Aid Society and before she goes in to see you, what is done by way of a physical examination, if anything?

A The blood pressure is usually obtained and the temperature, and the patient is usually seen by a nurse to see whether there are any gross abnormalities.

Q You say that the blood pressure is usually obtained, but [48] not in every case?

A I would say routinely.

Q With regard to the patient's questionnaire which you have before you there, there are some questions that relate to physical conditions. You have a question that relates, for example, to diabetes. Is diabetes a factor that you take into consideration when you are deciding whether you should operate on a patient?

A Not unless it is severe diabetes.

Q Have you had any cases of diabetes in young women under the age of 18?

A I have never had to reject a patient because of severe diabetes.

Q But you have had them report to you that they have diabetes?

A Yes.

Q And were any of those young ladies who have diabetes on insulin injections?

A No, none have been.

Q With regard to hay fever, is that a factor that you would consider in your decision to perform the abortion or not?

A Yes, if it were severe or uncontrolled.

Q And you would take their word for that, would you?

A Yes. Well, if I heard a patient wheezing, that would be reason enough to reject the patient.

Q Have you rejected any patients under the age of 18 for [49] reasons of hay fever?

A I have rejected patients for asthma or hay fever, but I don't know the age.

MR. LUCAS: Your Honor, we object to an extended inquiry on this. The Supreme Court decision makes it clear that there are certain matters between physician and patient that are not the subject of inquiry and regulation in the first trimester. We could go on endlessly talking about hay fever.

JUDGE ALDRICH: Do you intend to go on endlessly?

MR. REYNOLDS: No, I do not, Your Honor.

JUDGE ALDRICH: Then go ahead.

Q Is there any procedure for checking the heart rate of a patient when they come in?

A Yes. I failed to say that the pulse is usually obtained.

Q Just the pulse?

A Yes.

Q You do not listen with a stethoscope to the patient's heart?

A Not usually unless the patient indicates any sort of cardiac abnormality.

Q Have you had any heart abnormalities among those young women under the age of 18?

A It is hard for me to answer these questions when you are asking me specifically about under the age of 18. These [50] are not differentiated in my mind when I am doing the history.

Q When patients are presented to you it makes no real difference whether they are under the age of 18 or over 22?

A In terms of the specific examination, yes.

JUDGE FREEDMAN: Have you rejected people because of cardiac abnormalities but you do not know the age?

THE WITNESS: Yes, I have rejected patients because of cardiac abnormalities.

Q What about anemia?

A No, we have never had to reject a patient because of anemia.

Q How about the sickle cell disease?

A No, sir, we have never rejected a patient for sickle cell disease.

Q The patient's questionnaire we are looking at — it indicates that many of these questions are for statistical purposes only. Who gathers those statistics?

A I don't gather them.

Q Do you know whether Parents Aid Society does?

A Not to my knowledge, but I really don't know. Maybe we do.

Q Does it make any difference to you in your decision to [51] perform the abortion how question No. 14 is answered?

A No.

Q There is a factor there, is there not, Doctor, which we discussed in the deposition involving the Rh factor?

A Yes.

Q The Rh factor is a serious factor, isn't it?

A In terms of the possibility of there being an Rh negative patient who is pregnant it becomes serious, yes.

Q From time to time you do, of course, run into all patients who have Rh negative, isn't that so?

A All patients?

Q Some percentage of all patients have Rh negative?

A About 15% of the population.

Q Whether above or below the age of 18?

A Yes.

Q When that becomes a factor, when your patient, regardless of age, has the Rh negative factor, what is the procedure at that point?

A Well, for one thing, we do an Rh negative determination on the patient's blood. If the patient's blood is indeed

found to be Rh negative, a further factor is determined, the Du factor. If the Du factor is negative, the patient's blood is cross-matched to the Rh immune serum, the purpose of which is to prevent problems with future pregnancies because of the Rh incompatibility. It stops [52] the patients from developing certain antibodies that can cause in lay terms blue babies.

Q Spontaneous abortion?

A Yes, it could.

Q In other words, unless the serum is given there is a real probability of future adverse consequences?

A No, I wouldn't say that.

Q You wouldn't go that far?

A No. Very often — well, I shouldn't say very often — but often the Rh factor is not a problem, especially in the first pregnancy, but is a potential danger and should be dealt with.

Q And that is dealt with at some extra charge?

A Yes. The Parents Aid Society charges \$25, which is their cost, or a dollar below cost for the serum, for an injection of the serum.

Q Doctor, are you aware generally that there has been a change in the law since January 1, 1974 with respect to the age of majority here in Massachusetts?

A No.

Q Are you aware of no distinction between that which existed before January 1, 1974 and prior to it?

A No, I am not familiar with that part of the law.

Q Are you aware or do you have general knowledge of any crime referred to as statutory rape?

[53] A I think statutory rape is rape on a minor. I am not a lawyer. I don't know what the term really means.

Q That exhausts your information on that?

A Yes.

Q As I understand it, your general work week is a four day work week; is that correct?

A In terms of Parents Aid Society.

Q You work two days in New York and two days here in Boston?

A That is correct.

A When your deposition was taken on December 5th, in answer to a question as to the last record you had of the number of abortions you had performed for your last stint in Boston, I believe you answered that you had been the recipient of a check for \$900.

A I believe that is correct.

Q That was for two days work?

A That is correct.

Q Do you have a personal view as to whether or not a minor patient makes a decision to carry or not to carry during a pregnancy?

A Whether a minor patient elects to abort or carry through pregnancy, do you mean?

Q Yes.

A I think that is the patient's decision.

[54] Q It makes no difference to you one way or the other?

A No.

Q So far as you know, the Parents Aid Society has no facilities for those young ladies that might elect to carry full term?

A For prenatal care?

Q For any young lady that cares to carry her baby.

A I believe they usually are referred to an obstetrician.

Q From your general knowledge, Doctor, are you familiar with the adage, "Despite his good intentions, he that deals with a minor does so at his peril"?

A I have never heard that adage.

Q You have never heard that?

A No.

Q Are you familiar with the advertising campaign that is conducted by Parents Aid Society?

A Not an advertising campaign. I know there are ads in newspapers.

Q Are you consulted about the composition of those ads that are placed in the newspapers?

A Well, I believe it is just one ad. I have seen it.

MR. LUCAS: Objection. This inquiry is getting far beyond the issues in the case and even further beyond the interests of the intervenors.

JUDGE JULIAN: I understand the law of [55] Massachusetts prohibits or at least medical ethics prohibit a doctor from advertising. I suppose the purport of the question is whether or not this doctor is doing it indirectly.

MR. LUCAS: There is a case before the Supreme Court —

JUDGE JULIAN: I am not concerned with that. There is no decision of the Supreme Court on the matter.

MR. LUCAS: We submit he has not laid a proper foundation to show anything illegal or unethical about advertising, much less that it is relevant to the case.

Q I ask you, Doctor, if that is the ad with which you are familiar?

A Yes, that is the ad.

Q That is the ad that appears regularly in a newspaper here in Boston?

A I can't testify as to the regularity of it, but it is an ad I have seen placed in newspapers in Boston, yes.

MR. REYNOLDS: I would like to submit this in, Your Honor.

MR. LUCAS: We object to the receipt of this.

JUDGE ALDRICH: We will take it. Whether it is relevant or not, we will decide later.

THE CLERK: Defendants' Exhibit A.

(Ad marked Defendants' Exhibit A.)

MR. LUCAS: Could I see the full paper to see [56] if there are any other advertisements of a similar nature?

JUDGE ALDRICH: Yes.

Q I believe, Doctor, on your cross-examination by Mr. Behar, in describing the procedure by which the party is aborted, you said that there is a gentle curettage.

A Yes.

Q Is that a cutting?

A No, it is not.

Q Is it a scraping?

A It is a scraping, that's correct?

Q What do you scrape?

A The uterine wall.

Q Do you apply a tool to do that?

A Yes, a uterine curette.

Q What is its size and general character?

A It is about 15 inches long and it has a bulbous stainless steel handle. It has a thin shaft of stainless steel and a loop end with a sharp edge for scraping the wall.

Q Is the usual thing in that situation to have bleeding, isn't that so?

A Yes, that's correct.

Q As a matter of fact, bleeding after an abortion lasts for some four to ten days or so, isn't that right?

A It is possible. The most common situation is two to [57] three days. I might add for your edification that it can last longer than ten days, but that is not the common situation.

JUDGE FREEDMAN: Do you mean a flow or a stain?

THE WITNESS: Usually just a stain. For the first two or three days there is usually a flow of two ounces a day, but usually beyond that there is perhaps what you would describe as a stain.

JUDGE FREEDMAN: Have you ever had a case where there was an abnormal amount of flow and a transfusion was necessary for the patient?

THE WITNESS: Not that ever required a transfusion or any intravenous fluids, no.

Q It is not uncommon at Parents Aid Society to have several girls at one time giving pseudonyms for their names, isn't that so?

A It is possible. I am not knowledgeable as to that.

Q Do you make a check of the patient's name?

A No. Me, personally? No.

Q Yesterday you said that you were concerned about the potential enforcement of the statute, and I gather it is your intention to be law abiding, isn't it, Doctor?

A Yes, it is.

Q And if the statute in question is upheld, you will obey the [58] law, will you not?

A Yes, I will.

Q Doctor, it is my understanding from your deposition that as a general rule the patient who has been aborted leaves your premises about a half hour after the procedure is performed.

A A half hour to an hour on the average, I would say, yes.

Q What is the total length of time in the general run of things a patient is on the premises?

A Usually four to six hours.

Q With regard to the arrangements — you testified that you are a contract physician.

A That is correct.

Q As I recall it, at the deposition you said there was an annual accounting between you and Parents Aid Society with respect to the expenditure for nurses and the operating room.

A For the nurses on the days I am treating patients, yes.

MR. LUCAS: Objection. We are going far beyond the interests of the intervenors.

JUDGE ALDRICH: It seems to be starting out that way.

MR. REYNOLDS: I will end quickly, Your [59] Honor. This is on the issue of whether or not he is in fact an independent contractor as opposed to an employee.

JUDGE ALDRICH: Go ahead.

Q And you reimburse them 50% of that amount, is that so?

JUDGE ALDRICH: What amount?

MR. REYNOLDS: Of the total amount that has been expended for nurses through the year who have been present while he is operating.

A The cost of the nurses hired for the days when I am operating is split between me and Parents Aid Society.

Q And bring no tools to Parents Aid Society, do you?

A No medical tools, no.

Q With regard to where your facility is located, it is just off Copley Square, on Bolyston Street, isn't it?

A That is correct, 673 Boylston Street.

Q It is just across the street from the new addition of the Public Library?

A That is correct.

Q Thank you, Doctor.

A You are welcome.

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[60] RE-DIRECT EXAMINATION BY MR. LUCAS

Q Dr. Zupnick, are you familiar with the adage that the Bill of Rights is not for adults only?

A I am not familiar with it really

Q Referring to the exhibit I have handed you, would you look at Page 23 and tell the Court whether you see any advertisement there for any abortion facility?

A Yes, there is one for the Crittendon Clinic.

Q Would you look at Page 28?

A Yes.

Q Do you see one?

A Yes, there is one for Pre-Term.

Q Would you look at Page 39?

A There is an advertisement there for New England Women's Services.

Q Do you think these ads are useful for informing patients of the availability of abortion services in the Commonwealth?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: Sustained.

Q Are you familiar with the medical and organizational practices at abortion facilities other than the two you have worked in to some degree?

A To some degree, yes.

Q In your experience is the method of payment at Parents Aid [61] Society common to these other facilities — the method of determining fees, I should say, of the physicians?

A I assume so, yes. To my knowledge it is common.

Q In your experience as a physician, is it regarded as proper and ethical?

A Yes.

Q Do you know of any case where it has ever been challenged as not being proper and ethical?

A No.

Q Do you know the number of abortions that are done in free-standing facilities in the United States each year, approximately?

A I can't give you that number.

Q Do you know whether or not menstrual extractions are widely done in the United States?

A They are done in the United States, but I would say not as commonly as abortions. It would be a much smaller number.

Q Do you know whether or not the United States Government has financed menstrual extraction programs throughout the world?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: I must say I am sorry we got into this at all. I haven't seen the relevancy. I can't [62] blame you for asking questions since the defendants opened it up.

MR. LUCAS: That is the last question.

JUDGE ALDRICH: Go ahead.

Q Are you familiar with United States Governments abroad?

A No, I am not.

Q Do you find that the questions minors ask any different from the questions adults ask at Parents Aid Society?

A As a general range of questions, no.

Q Do you regard Mr. Baird as an expert counselor?

A Yes.

Q Do you regard him as qualified to train other counselors?

A Yes.

MR. BEHAR: Objection.

JUDGE ALDRICH: He may have it.

MR. LUCAS: No further questions. Thank you.

THE WITNESS: You are welcome.

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RE-CROSS EXAMINATION BY MR. BEHAR

Q If parents are involved and do come into Parents Aid Society with their minor daughter, do they sign anything?

A I don't believe so, no.

Q So even with the parents you have no knowledge of parents signing anything?

[63] A No, I don't believe so.

Q Do you receive a fee if no abortion is performed on a particular patient?

A No.

Q The other forms —

A Let me qualify that last answer. If I examine a patient and she is found to be over 12 weeks gestation, a ten dollar fee is charged for that examination, assuming the patient is not being done for free, and I share in the ten dollar fee.

Q The other forms besides the consent form, did you write those forms?

A No, I didn't write any of these forms.

Q Do you know who did?

A No.

Q They were just there when you showed up?

A Yes.

Q Do you have any personal recollection of any of the Mary Moes in this case?

A No, I don't.

Q You indicated yesterday that you didn't think there was any rational medical or psychological reason for requiring the consent of both parents in this situation; is that right?

A Yes.

Q In your judgment — [64]

JUDGE ALDRICH: Is this re-cross examination?

MR. BEHAR: I would ask the Court's indulgence for two questions.

JUDGE ALDRICH: All right.

Q Is there any rational medical or psychological reason for requiring the consent of one parent in your judgment?

A No.

Q Emotional support is not a rational reason in your judgment then?

A I didn't say emotional support. You asked me about consent. Emotional support is always important. You asked me about consent.

Q You don't think that parental involvement, which is attached to consent, can provide that emotional support?

A It can, but you don't have to have consent to have that emotional support from a parent.

MR. BEHAR: I have no further questions.

JUDGE ALDRICH: Mr. Reynolds, do you have anything further?

MR. REYNOLDS: No, thank you, Your Honor.

JUDGE ALDRICH: Mr. Lucas, would you be willing to state for the record, because there was no reporter present yesterday afternoon, what you are prepared to stipulate?

MR. LUCAS: We are willing to stipulate that [65] we are challenging the statute only on its face as opposed to as applied.

JUDGE ALDRICH: Under those circumstances, I would like to inquire of the defendants whether there is any need of taking the testimony of Mary Moe, I?

MR. BEHAR: May we have a moment?

JUDGE ALDRICH: Surely.

MR. BEHAR: I would ask the Court whether a recess could be taken at this point.

JUDGE ALDRICH: Yes.

MR. BEHAR: Thank you.

(Recess)

MR. BEHAR: Your Honor, we are not agreeable to the suggestion.

JUDGE ALDRICH: Under those circumstances, would it be appropriate to take the testimony in camera at two o'clock?

MR. BEHAR: Yes, Your Honor.

MR. LUCAS: Yes, Your Honor, it would be. We do suggest it would be proper for the Court, in light of the fact one of the plaintiffs has testified on the standing issue and the law is being challenged on its face, not to require any further testimony.

JUDGE ALDRICH: I would hope counsel would see it that way, but we can not insist on it.

[66] MR. RILEY: We made a request, Your Honor, for the identity of Mary Moe, I and Mary Moe, III for the purpose of cross-examination if she takes the stand. We would ask the Court for an order compelling the plaintiffs here to reveal the identity of Mary Moe, I and Mary Moe, III.

JUDGE ALDRICH: We will face that at two o'clock.

MR. LUCAS: We do have Mr. Baird available to testify.

JUDGE ALDRICH: We will take Mr. Baird until one o'clock.

* * * * *

JANUARY 28, 1975.

[3] MR. BEHAR: Very well. The defendants call Dr. Jules Rivkind.

* * * * *

JULES RIVKIND (SWORN)

DIRECT EXAMINATION BY MR. BEHAR

Q Would you please state your name and address for the Court, spelling your last name?

A Jules Rivkind, R-i-v-k-i-n-d, Pittsburgh, Pennsylvania.

Q What is your occupation?

A Physician specializing in obstetrics and gynecology.

Q Are you licensed to practice medicine in some states?

A Yes.

Q Would you identify them?

A New York, Connecticut, California, Pennsylvania.

Q What is your current position?

A Chairman of the Department of Obstetrics and Gynecology at Mercy Hospital and Director of the Residency Training Program.

Q How long have you held that position?

A Since January 1, 1971.

Q Could you state your duties and responsibilities in these capacities?

A As Chairman of the Department in consultation with our staff we establish policies and assure the implementation of those policies within the department, and act with the other chairmen in establishing generalized [4] medical policy for the hospital and to act in concert with the other ancillary services, the nursing services, and so forth, to ensure the highest possible patient care.

Q Will you briefly sketch for the Court your medical training?

A I was graduated from the New York University College of Medicine in 1955 with an M.D. degree. I next took a surgical internship at St. Vincent's Hospital Medical Center in New York, followed by two and a half years as a flight

surgeon in the United States Air Force specializing in the transportation of patients requiring total respiratory assistance.

I returned to New York for four years of training in obstetrics and gynecology at St. Vincent's Hospital Medical Center. This was followed by a year of fellowship during which time I was in charge of the teaching program for the medical students at what at that time was Seton Hall Medical School, which later became the Medical School of the State of New Jersey.

I then joined the Chairman of the Department as his associate in practice, eventually becoming chief of clinical obstetrics.

Q Could you sketch in any other detail your clinical background in addition to your present position?

A In addition to that, during my tenure in New York [5] I acted for several years as a consultant and clinician to the New York City Health Department specifically in the areas of psychology and juvenile venereal disease.

Just prior to leaving, we also incorporated the in-patient service at Columbus Hospital in New York City, and I became chief of clinical obstetrics at Columbus Hospital as well.

Q I show you a four-page document and ask you to identify it.

A Yes. This is my curriculum vitae.

MR. BEHAR: I would offer this as an exhibit.

THE CLERK: Defendants' Exhibit D for Identification.

JUDGE ALDRICH: No, it is in evidence.

THE CLERK: D in evidence.

(Curriculum Vitae of Jules Rivkind,
M.D. marked Defendants' D.)

Q Doctor, do you routinely keep up with the literature regarding obstetrical and gynecological problems?

A Yes, I do.

Q Are you familiar with techniques for termination of pregnancy?

A Yes, I am.

Q Could you identify those techniques?

A There are several. The most widely used at the present time is dilation and curettage, followed by vacuum aspiration, saline abortions and hysterotomies are also used.

[6] Q Have you had occasion to utilize these techniques yourself in the course of your professional practice?

A Yes, I have.

Q There arise occasions when continuation of pregnancy may be detrimental to the life of the mother or fetus, usually both. In those instances a premature delivery, a termination of pregnancy without prejudice, is frequently indicated. We act in consultation with those experienced in the specialized fields of medicine and will terminate the pregnancy without prejudice as far as the outcome goes.

JUDGE FREEDMAN: You mean as far as future pregnancies?

THE WITNESS: No, as far as that particular pregnancy and the infant. Our end point is a living baby and a healthier mother. I have not performed abortions using these techniques.

JUDGE ALDRICH: I didn't get the last few words.

THE WITNESS: I say I have not performed abortions using these techniques. But these techniques are not unique. They are used for a wide variety of purposes.

Q I think, to help the Court, you draw a distinction between abortion and termination of pregnancy, as I understand it?

[7] Yes, I do.

JUDGE FREEDMAN: Is another name for this procedure forced labor to bring about delivery?

THE WITNESS: Induced or forced labor, yes. With the Court's indulgence, I would like to say that the end point is different.

Our purpose is to ensure, as I said, a healthier mother and a live birth.

JUDGE ALDRICH: What about first trimester procedures? Have you ever performed any?

THE WITNESS: Not in the abortion context.

JUDGE ALDRICH: In what context have you performed them?

THE WITNESS: When presented with a patient who has an incomplete abortion, we will complete it using these techniques.

JUDGE ALDRICH: Suppose the patient has had no incident of abortion?

THE WITNESS: These techniques are also used for diagnostic purposes.

JUDGE ALDRICH: The question was have you used them?

THE WITNESS: Yes, I have. We have also used them in the instances of missed abortions when the pregnancy has begun but then has ceased, the patient has failed to pass the products, we will perform these same techniques.

[8] Q Doctor, in the course of your professional practice do you have occasion to treat women who have had abortions?

A Yes, I do.

Q About how many such patients have you treated?

A The number varies from week to week, but I would say on the average of four to five a week.

Q Do these patients include adolescents under 18 years of age?

A Yes, they do.

Q Under what circumstances do you treat patients post-abortally?

A For post-abortion complications primarily.

Q How do these patients come into the Mercy Hospital, for example?

A Being a downtown hospital with a very active emergency room and a gynecological clinic, we accept for treatment any woman who presents herself to us. We have an active downtown clinic, abortion clinic, which has limited hours. They do not have 24-hour service. Frequently, the patients are told that if a problem arises, to come to the nearest hospital.

Q What complications following abortion have you been concerned with among these patients?

A Well, the majority of the patients present themselves either with fever or pain, which is indicative of infection, or with excessive prolonged bleeding or blood loss.

Q Are these considered major complications from this procedure?

A Yes.

Q Are these complications discussed in the medical literature?

A Yes, they are.

Q Doctor, based upon your education, training and experience, do you have an opinion as to whether the complications you have mentioned pose a greater risk to adolescents under 18 as opposed to adults?

A Yes, I do.

Q What is your opinion?

A That they do indeed pose a greater risk, not only in terms of immediate complications, but in terms of their implications for future reproductive history.

Q What are those implications?

A The literature from throughout the world suggests that in the interruption of a first pregnancy subsequent pregnancies are exposed to increased risks in all aspects of obstetrical

practice, including premature deliveries, spontaneous mid-trimester abortions, faulty implantation with errors of placental development.

MR. LUCAS: I object to the question. There is a lack of foundation. I think there is no basis for this opinion. He referred to the literature throughout the world without giving us any description of it.

[10] JUDGE ALDRICH: He may answer.

Q Is your opinion, in addition to your education, training and experience, also based upon your studies of the literature?

A Yes, it is.

Q Would you please continue.

A The incidence of cervical incompetency was well established long before the present interest in abortion. Most obstetricians when interviewing patients for the pre-natal history would inquire as to whether or not there has been any interruptions of pregnancy prior to that pregnancy under care. Their blood loss tends to be greater.

In addition to that, the incidence of dystocic labor, labor which has progressed badly or poorly, is increased in women who have had one or more abortions. Not only that, but from the literature, and here we would depend upon the literature particularly from Eastern Europe, there is an increased incidence of spontaneous abortions in women who have had previous therapeutic abortions.

JUDGE ALDRICH: Doctor, if I understood the question that was asked you and which you have been answering, it was whether or not there was any greater risk with respect to minors having abortions than those who are not minors.

THE WITNESS: Yes.

[11] JUDGE ALDRICH: Are all those things you are telling us more noticeable, more likely in the case of minors than they are in the case of adults?

THE WITNESS: Yes, sir, because for the minor the pregnancy under consideration tends to be their first and the woman —

JUDGE ALDRICH: That does not answer my question. If I am 24 year old woman, it may be my first, too. Are you drawing a distinction between an 18 year old woman and a 17 year old woman?

THE WITNESS: No. The distinction —

JUDGE ALDRICH: Excuse me?

THE WITNESS: The distinction I am drawing is between a woman in her first pregnancy, having an interruption, and a woman who has an interruption after several pregnancies and probably will have no other pregnancy in the future.

JUDGE ALDRICH: All right. I will note for the record that none of your answers have been responsive to the question, but they may stand.

Q Doctor, what does the term morbidity mean in relation to abortion?

A Complications.

Q Are the complications you have enumerated in your last answer typical of morbidity problems?

A Yes, they are.

Q Doctor, based upon your education, training, experience [12] and studies of the literature do you have an opinion as to the state of medical knowledge on morbidity problems?

A Yes.

Q What is that opinion?

A It is woefully lacking.

JUDGE ALDRICH: None of us heard what is woefully lacking.

THE WITNESS: Knowledge of morbidity concerning therapeutic abortions.

JUDGE JULIAN: What do you mean by morbidity?

THE WITNESS: Morbidity would be complications taken as a general class.

JUDGE ALDRICH: It is woefully lacking where — in this courtroom?

THE WITNESS: In the medical profession.

JUDGE ALDRICH: All right. Why don't you say so?

THE WITNESS: I have, sir.

MR. BEHAR: I'm sorry. That was the question.

JUDGE ALDRICH: We didn't hear any of it.

MR. BEHAR: I'm sorry.

Q Doctor, based upon your education, training, experience and studies of the literature, do you have an opinion whether a therapeutic abortion is a safe procedure?

A Yes, sir, I do.

Q What is that opinion?

[13] A That it is not.

Q And could you explain the reasons for that opinion?

A Although there is a great deal of divergence in morbidity rates, and that is what tempered my answer to the previous question, the average rate appears to be about 8% to 9% morbidity in early abortions. This, for an elective operation, is a rate which most individuals would find unacceptable.

Q Does Mercy Hospital do elective surgery?

A Yes.

Q Do you have patients showing up with complications at the same rate for those procedures as show up with complications for abortions?

A Only for the most serious of operations. May I explain?

Q Yes, please.

A Our morbidity or complication rate for radical hysterectomy is approximately 10%. Anyone will question the circumstances under which an elective operation is performed if the complication rate is much more than 5%.

Q In the course of your professional career, have you delivered babies?

A Yes, I have.

Q Approximately how many?

A Perhaps, well, almost 10,000.

Q Did the mothers involve adolescents under 18?

[14] A Yes.

Q Based upon your education, training, experience and studies of the literature, do you have an opinion as to whether childbirth in an adolescent poses a greater risk than childbirth in an adult?

A Yes.

Q What is that opinion?

A Based upon the latest information, it does not carry a greater morbidity threat. May I expand?

Q Please do.

A Recently a collaborative study was completed which encompassed some 60,000 pregnant women. The findings of that study ran contrary —

MR. LUCAS: Objection, unless he identifies the study and participated in it. Otherwise, he is just telling us what is in a periodical which we have no knowledge of.

JUDGE ALDRICH: The name of that study was what?

THE WITNESS: Collaborative Study — Women and Their Pregnancies.

JUDGE ALDRICH: Who made it?

THE WITNESS: There were several authors.

JUDGE ALDRICH: Were you one?

THE WITNESS: No, I was not.

JUDGE ALDRICH: I think the best answer to that would be to produce it.

[15] MR. BEHAR: Are you excluding the further answer?

JUDGE JULIAN: I think it should be admitted.

JUDGE ALDRICH: I don't question it should be admitted, but a summary of a study as a distinct study — the best evidence is what is the study itself.

MR. BEHAR: I won't press the question.

Q Doctor, based upon your education, training, experience and studies of the literature, do you have an opinion whether therapeutic abortion constitutes a greater medical risk to an adolescent under 18 than delivery?

A Yes, I do.

Q What is that opinion?

A They carry about equal risks.

Q In your judgment, is therapeutic abortion a surgical procedure?

A Yes, it is.

Q Do you yourself regularly perform gynecological surgery?

A Yes, I do.

Q Upon both adolescents under 18 and adults?

A Yes.

Q Based upon your education, training, experience and studies of the literature, do you have an opinion as to what constitutes proper and accepted medical practice regarding obtaining parental consent for surgery being performed upon a minor?

A Yes.

[16] Q What is the opinion?

A That with the exception of the situation in which any delay would be hazardous to the life of the patient, we attempt to involve the patient in the permission for whatever procedure is going to be performed.

Q What do you understand the policy reasons behind this accepted medical practice as you see it?

A That the minor has not that basis of experience to make a valid judgment as to the necessity for the procedure or the safety of the procedure.

Q Is it proper medical practice to obtain parental consent on the type of anesthetic or the kind of anesthesia being employed?

A Consent is required for several aspects of any procedure and anesthesia is one of them, and blood transfusion is another, in addition to the operation itself.

Q Is an accepted medical practice in your judgment not to obtain parental consent where local anesthesia is employed?

A No. We obtain consent whenever anesthesia is employed.

Q Is there any medical reason why parental consent should not be obtained for abortions?

A No.

Q Regarding the adolescent, and by that I mean under 18, patients that you have treated who have suffered abortion [17] complications, do you routinely discuss the abortion operation with them?

A It is a necessity, yes.

Q Why do you do that?

A In order to ascertain what the cause of the problem was.

Q In the course of these discussions, do you form opinions as to their understanding of that operation?

A Yes, I do.

Q Doctor, based upon your education, training, experience and studies of the literature, do you have an opinion as to whether 16 year olds as a class can give an informed consent to an abortion?

A Yes, I do.

Q What is that opinion?

A It is my opinion that they do not have the basis of experience for making an appropriate judgment.

Q Have any of the adolescents under 18 you have treated for abortion complications obtained the abortion without parental consent in some instances?

A Some have, yes.

Q Were the parents notified relative to the complications?

A Yes, they were.

Q Did you have occasion to discuss the reasons why the parents were not notified of the abortion originally?

A Yes.

Q What were some of those reasons?

[18] A Primarily on the part of the patient hesitancy to discuss the subject with her parents. There is usually an antecedent problem in the family relationship. Occasionally, it is a fear of reproach, reprimand, and occasionally it is because of a total inability to discuss matters of sexuality between the adolescent and her parents.

Q Doctor, can you generalize as to the reactions of parents who first learned of their daughter's situation at the complication stage?

A Frequently the initial response is one of disappointment that the adolescent did not feel able to discuss the problem with her parents. Next, many, many parents demonstrate a sense of disappointment.

But I have yet to see any parents walk out of the emergency room or the clinic and leave their child because of this.

Q Doctor, based upon your education, training, experience and studies of the literature, do you have an opinion as to whether parental involvement in a minor faced with a decision whether to continue or terminate pregnancy would be beneficial to that minor?

A Without question.

Q In your experience, do doctors bring different degrees of sensitivity and expertise to a particular surgical procedure?

A Yes, they do.

[19] MR. BEHAR: I have no further questions of this witness.

* * * * *

CROSS-EXAMINATION BY MR. LUCAS

Q What hospitals do you currently practice in in Pittsburgh?

A Mercy Hospital and St. Claire's Hospital.

Q Is Mercy Hospital a public hospital?

A No, it is not.

Q Are abortion procedures performed at all at Mercy Hospital?

A No.

Q Are elective sterilization procedures performed there?

A No.

Q Is it true that they do not even have birth control pills in the pharmacy at Mercy Hospital?

A No, that is not true.

Q Under what circumstances are birth control pills prescribed from the pharmacy there?

A The clinic pharmacy does have them for control of gynecological problems. Perhaps this is a misunderstanding. The term birth control pills is a most convenient one. But the combination of hormones is useful in many, many other instances above and beyond contraception.

Q They are never prescribed for elective contraception from the hospital clinic?

[20] A They may be if in the opinion of the physician it is in the patient's best interests that she remain anaboratory, yes.

Q To what extent have they been prescribed in the patient population in the last year?

A Fairly widely.

Q What are the background policies that control or what is the source of the policy on the abortion practice at Mercy Hospital?

A I'm sorry. I don't understand.

Q Is Mercy Hospital governed by the ethical directives of the U.S. Catholic Conference?

A Yes, it is.

Q Does the hospital receive Federal funds?

A Yes, it does.

Q Have you attended any medical or non-medical conferences on the subject of reproductive medicine in the last two or three years?

A Yes, many.

Q Could you describe which conferences you have attended?

A Primarily those of Planned Parenthood, the American College of Obstetricians and Gynecologists, both regional and national, conferences sponsored by the Family Planning Council of Southwestern Pennsylvania, now the Family Planning Council of Western Pennsylvania, of which I am a member of the Board of Directors, and meetings of the American Medical Association, meetings [21] of our Pittsburgh Obstetrical Society, meetings of the American College of Surgeons, and so forth and so on.

Q Have you attended any conferences of organizations that are opposed to elective abortion?

A That are opposed to elective abortion? Yes.

Q Could you tell me which conferences of those you have attended?

A I had been active in Pennsylvania for Human Life until about six months ago.

Q What does that organization do?

A It is involved in educating primarily and to some extent it acts as a reference source for patients who find themselves in difficult pregnancy and who are seeking alternatives to abortion.

Q Did that organization lobby against the Pennsylvania Abortion Law recently enacted last fall?

A Yes, it did.

Q Did you testify before the legislature on that statute?

A Yes, I did.

Q And in your testimony there did you express the opinion that all forms of contraception caused some sterility in the future?

A No, I did not.

Q Have you ever expressed that opinion in a public statement?

A To the best of my knowledge, I never did.

[22] Q Have you been involved at the national level in any of the Right to Life organizations?

A No.

Q Are you not a member of the National Right to Life Committee?

A No, I am not.

Q Have you given any talks at the Right to Life meetings?

A Locally in Pittsburgh, yes.

Q Any on a state-wide or national basis?

A No, none.

Q Have you written any articles on the subject of adolescent pregnancy?

A No, I have not.

Q Did you testify in court in the Pennsylvania case involving parental consent and other restrictions last fall?

A No, not to the best of my knowledge. The only hearing that I participated in was a panel — it was the Governor's Select Committee that I testified before.

Q Did you support the parental consent restriction in your testimony?

A Parent consent was not under consideration at that time.

Q In Pennsylvania?

A Not in my testimony or at the time of the hearing that I participated in.

Q What was the scope of your testimony?

[23] A Primarily as to the medical aspects of abortion.

Q I notice from your curriculum vitae that the first two articles you are a co-author of have to do with the rhythm method of birth control. Is that the primary method you advocate?

A No, it is one of several options we offer to our patients.

Q Do you regard that as having a high degree of accuracy?

A Statistically it is equivalent to the use of the condom.

A Or the diaphragm alone?

A Yes.

Q I notice also you have written articles on the subject of venereal disease. Have you ever treated patients with venereal disease problems who are minors?

A Many, many times.

Q Are you required to notify the parents in Pennsylvania when you do this?

A No, we are not.

Q Do you notify the parents?

A No. This is an exclusion under the Pennsylvania law.

Q Why do you not notify them, because you are not required to?

A We do so after consulting with the patient. If she wishes to, we do, and if she doesn't, we don't.

Q This is with all minors you treat for venereal disease [24] problems?

A Yes, acting under the law of the State of Pennsylvania.

Q I presume you regard these minors as capable of consenting to treatment for venereal disease?

MR. REYNOLDS: Objection.

JUDGE ALDRICH: He may answer.

A They have been declared competent by the State of Pennsylvania and I would not question that.

Q I notice you are a member of the American College of Obstetricians and Gynecologists. Do you support their policy position on abortion?

A No, I don't. There are many who do not.

Q Under what circumstances do you think any abortion is permissible?

A I think that if it can be objectively demonstrated that the life of the mother is placed in jeopardy by continuation of the pregnancy, that that pregnancy may be terminated.

Q Have you performed any abortions under circumstances other than those you just described in the entire course of your medical career?

A I have not performed abortions under any circumstances.

Q Have you had any experience with minors who were so-called battered children?

JUDGE JULIAN: What kind of children?

[25] MR. LUCAS: Battered children.

JUDGE ALDRICH: Battered?

MR. LUCAS: Yes.

JUDGE JULIAN: What is a battered child?

MR. LUCAS: It is a common term, children abused by their parents.

JUDGE JULIAN: Assault and battery committed on them?

MR. LUCAS: Yes. It is a common syndrome. A number of books have been written on it.

JUDGE JULIAN: Do you understand the question?

THE WITNESS: Yes, I do.

JUDGE ALDRICH: Go ahead.

MR. REYNOLDS: Objection.

MR. BEHAR: Objection.

JUDGE ALDRICH: He may answer.

THE WITNESS: May I answer?

JUDGE ALDRICH: Yes.

A Yes, I have. I had the fortune of training under the physician who originally described the syndrome, Dr. Vincent Fontana, at St. Vincent's Hospital in New York.

Q Have you dealt with a large number of these cases?

A No. I don't think any single physician has.

Q Do you regard the parents of these battered children as competent to withhold consent for medical treatment of those minors?

MR. BEHAR: Objection.

[26] MR. REYNOLDS: Objection.

JUDGE ALDRICH: Excluded.

Q Do you regard all 17 year olds as a class as incompetent to consent to an abortion procedure?

A No. I think there are some who are mature enough to handle a decision of that sort.

Q Would you say a large proportion are capable of making such a decision?

A No. Some are.

JUDGE JULIAN: Did you say 17 or 18?

MR. LUCAS: Seventeen.

JUDGE JULIAN: Is that what you asked him?

MR. LUCAS: Yes, Your Honor.

Q Are they capable of understanding the future life consequences of the choice between having an abortion and going through pregnancy at age 17 as a class?

A Some are.

Q Are 17 year old married patients any more competent than unmarried patients or are they about the same?

A I would say they had an additional experience which has perhaps made them more competent.

Q Are there many cases where being married and under 18 would make them less competent?

JUDGE ALDRICH: I couldn't hear your question.

Q Are there many cases where being married and under 18 would make them less competent in your experience?

A I would have no basis for answering one way or the [27] other.

Q What has been your experience with reproductive health problems of married minors under age 18?

A That they tend to be no different from their older peers.

Q Do you think parental consent ought to be required for an abortion for a married minor under 18?

MR. REYNOLDS: Objection.

MR. BEHAR: Objection.

JUDGE ALDRICH: Excluded.

Q In your description of the risks in subsequent pregnancies caused by abortion were you relying on the Japanese literature?

A No.

Q Were you relying solely on the Eastern European literature?

A No.

Q What literature were you relying on?

A Reports from England, Scandanavia, Eastern Europe, which I think are more pertinent than those in Japan, and which have been limited.

Q Could you specifically identify any of those reports?

A There was a report of the Maternal Health Committee of Denmark in the early 1960's that indicated the same tendency at that time.

Q What percentage of spontaneous abortions is increased by the fact of a prior abortion according to that study?

[28] A Perhaps as much as 5%.

Q Denmark still permits elective abortion, doesn't it?

A Oh, yes.

Q Isn't it true every one of the countries you named in connection with those studies permits elective abortions?

JUDGE JULIAN: Are you talking about adolescents under age 18 or generally?

MR. LUCAS: Generally speaking.

JUDGE JULIAN: Are we concerned with that? I thought the case before us dealt with adolescents under the age of 18.

MR. LUCAS: I agree that it does. I would like to ask him the specific question whether there is any difference.

THE WITNESS: May I have the question repeated, please?

Q Isn't it true that each of the countries you named, Scandinavia and the Eastern European countries, permit elective abortion at this time as a matter of their law?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: If we are going to go into these countries, are we going to stop at any particular place?

JUDGE JULIAN: I don't see the relevancy of going into adults. I thought we were dealing with adolescents, with minors under the age of 18.

[29] MR. LUCAS: The only point I was trying to make is that the testimony had suggested that complications of abortion somehow were a reason for not permitting abortion, and I wanted to point out each one of these countries permits elective abortion and that the witness knows that.

JUDGE ALDRICH: Are you going to ask the witness about abortions for minors in those countries?

MR. LUCAS: Yes, Your Honor, I am.

THE WITNESS: May I answer?

JUDGE FREEDMAN: You may.

A Yes. Indeed these countries do have policies permitting elective abortion. However, three of them have limited severely within the last three years abortions available to minors in their first pregnancy.

Q Haven't these countries done this limitation solely for population control, perhaps consistent with the political philosophy of those countries?

MR. REYNOLDS: Objection.

JUDGE ALDRICH: I don't know how the witness can answer that.

Q Do you know what the stated governmental reason was for making those limitations on abortion?

MR. REYNOLDS: Objection.

JUDGE ALDRICH: Counsel, if you would open your mouth, please? I didn't hear any of that question.

Q Do you know what the stated governmental objection was [30] in making those restrictions on abortion?

MR. REYNOLDS: Objection.

JUDGE ALDRICH: If they are in the reports he relied on, that is a proper question.

A They were not in the reports to the best of my knowledge.

Q Do you know what type of medical techniques were used for terminating pregnancy in the Eastern European and the Scandinavian countries that you mentioned earlier?

A In general, yes; specifically, no.

Q Isn't it true in general they did not use the vacuum technique?

A I don't know that to be true.

Q Do you know whether or not they used dilatation and curettage rather than suction?

A I don't know that to be true.

Q You don't know what type of technique they used?

A Yes. They used both methods, but what percentage of each, I don't know.

Q Do you know when the vacuum method was introduced into those countries?

A Yes.

Q What year was that?

A Approximately 20 years ago.

Q I believe you testified abortion was not a safe procedure in your opinion.

A Yes, that is true.

[31] Q Are you aware 90% of the first trimester abortions in this country are performed outside of hospitals?

A Yes, I am.

Q Are there any other major procedures you know of that are performed outside the hospital?

A No, I don't, but that does not necessarily make it safe.

Q You testified concerning what is acceptable medical practice for obtaining the minor's consent or whether or not to obtain the minor's consent is good medical practice. Aren't there many factors other than medical considerations that go into the decision to obtain parental consent?

A I am acquainted with the medical. I must admit I have no knowledge of other factors.

Q With venereal disease, don't you rely on the state law as a reason for not obtaining parental consent? Didn't you say that earlier?

A Yes. The state law enables the minor to seek treatment without parental consent.

Q If the state law enabled you to treat a minor for an abortion procedure, assuming you did them, wouldn't that be the same type of situation?

MR. BEHAR: Objection.

A No. They are two entirely different matters. It is like comparing apples and bananas.

Q Would you draw a distinction between parental involvement [32] and allowing parents to withhold consent for any reason?

MR. BEHAR: Objection as to form.

JUDGE ALDRICH: I'm sorry. May I have the question again?

MR. LUCAS: Let me rephrase the question.

Q I believe you testified earlier concerning the desirability of having parental involvement. Would you make any distinction between the desirability of having parental involvement in the abortion decision as opposed to the desirability of allowing the parents to withhold consent for any reason?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: I didn't hear the first question and I don't understand the second one.

Q With regard to abortion, you testified that it was desirable to have parental involvement in your opinion?

A Yes.

JUDGE ALDRICH: So did your witnesses. We don't have any problem there.

MR. LUCAS: That is probably the only thing both sides agree on.

Q Do you think it is desirable to allow the parents to withhold consent for any reason suitable to the parents?

MR. BEHAR: Objection.

JUDGE ALDRICH: I think that should be limited to his medical views. He is not a philosopher [33] or a legislator.

Q Do you think it is desirable to let the parents have the final decision from a medical standpoint whether the minor is going to have an abortion?

MR. BEHAR: Objection.

JUDGE ALDRICH: He may answer.

A I think that it is a matter of involving all. I can not see one group making the decision without the consent of the other.

Q How do you resolve the conflict of patient and parent when you have a minor patient?

A Well, not in this particular frame of reference, but we have had situations primarily in terms of blood transfusion, and we have had recourse to the court and requested the court to act as guardian for the minor.

Q Have you done that in instances to obtain treatment for the minor when the parents objected?

A Yes, and parenthetically, we have never been refused.

Q Do you find parents as a class have a better understanding of the abortion procedure than the minors do?

A In general, I would say yes, particularly the risks.

Q What percentage of the parents that you encounter of abortion patients or post-abort patients — what percentage of those parents have any training in gynecology?

MR. BEHAR: Objection.

[34] JUDGE ALDRICH: I think that is getting far afield.

Q Is it a reasonable statement to say that you are actively involved in attempting to have the Supreme Court decision overturned in your lobbying efforts in opposition to abortion?

A Is it reasonable?

Q Yes. Is it?

A No, it is not.

Q Are you not involved in lobbying other than the lobbying you testified to earlier?

A No, I am not.

MR. LUCAS: No further questions.

MR. REYNOLDS: No questions.

JUDGE JULIAN: What countries do have limitations on elective abortion on minors?

THE WITNESS: Hungary, Czechoslovakia and Romania.

JUDGE JULIAN: Did they previously allow such procedures?

THE WITNESS: Yes, they did.

JUDGE JULIAN: Do you know whether these changes have come within the last three years?

THE WITNESS: Within the last few weeks.

JUDGE JULIAN: Is the source of your information with respect to those three countries official reports?

[35] THE WITNESS: No. Newspaper reports and reports in various medical journals.

JUDGE JULIAN: Reports in medical journals you have read?

THE WITNESS: Yes.

JUDGE JULIAN: Did the authorities state the reasons for the change of attitude in those three countries?

THE WITNESS: No, they didn't. They suggested but did not state it specifically.

JUDGE FREEDMAN: Doctor, I think you have answered this before, but I will put it to you anyway. Have you had specific occasions when it was your advice to parents that minors under 18 should be aborted for safety's sake?

THE WITNESS: No. We have told the parents that in our opinion and the opinion of the consultants we called upon that the continuation of the pregnancy did carry a certain risk, and it was left to the option of the minor and her parents then to make the decision.

JUDGE FREEDMAN: The occasion never arose where the pregnancy had developed to the point where you actually foresaw health factors that could create a real risk to the patient and then advised the mother or the father to consider an abortion?

THE WITNESS: No. We have not been faced with the necessity for medical reasons of advocating [36] abortion in any of these cases.

JUDGE ALDRICH: Doctor, in your opinion, when we are talking about a woman giving a valid consent, by which we mean an understanding consent, do you feel most females age 18 are capable of giving a valid consent?

THE WITNESS: Yes, sir. I think they have had sufficient experience to permit them to make a more appropriate judgment.

JUDGE ALDRICH: And you would say most of them do?

THE WITNESS: Yes.

JUDGE ALDRICH: But you would say at 17 most of them do not?

THE WITNESS: I think that there is —

JUDGE ALDRICH: In fact, that is what you did say.

THE WITNESS: Yes. I think there is a marked difference between young people in this particular age range in terms of their total experience.

JUDGE ALDRICH: Thank you.

MR. BEHAR: This witness may have to leave Massachusetts for commitments back home in Pennsylvania. Could he be excused if it is necessary for him to do so?

MR. LUCAS: No objection, Your Honor.

JUDGE ALDRICH: Yes. Thank you, Doctor.

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[37] RAYMOND C. YERKES (SWORN)
DIRECT EXAMINATION BY MR. BEHAR

Q Would you please state your name and address for the Court?

A Dr. Raymond C. Yerkes, 86 High Plain Road, Andover, Massachusetts.

Q What is your occupation?

A I am a child psychiatrist.

Q Are you licensed to practice medicine in Massachusetts?

A I am.

Q What is your present position?

A My present position is Director of the Child Service at the Greater Lawrence Mental Health Center, and I am in half-time private practice.

Q How long have you been Director of the Child Service?

A I have been Director full-time of the children's services from June, 1971 until this fall and half-time from this fall until now.

Q Can you describe generally your duties and responsibilities as Director?

A Yes. Ours is a community mental health center, a first line treatment and services facility, providing services to 140,000 adults and a community of 25,000 young people. My duties encompass area-wide planning and coordination for child services of all ages, being a member of the administration of the clinic formulating policy and directing clinically my own particular unit [38] where I supervise three psychologists, three psychiatric social workers, two social work students and two guidance students in the delivery of services and, in addition, I treat children, adolescents and parents myself.

Q Could you briefly sketch for the Court your medical training?

A Yes. I graduated from Harvard Medical School in 1961 and had two years of postgraduate experience in internal medicine and pediatrics at Beth Israel Hospital, Boston.

From there I had two years of adult psychiatric training at the Massachusetts Mental Health Center, formerly the Boston Psychopathic Hospital, and two years of training in child psychiatry, working with children and parents in the Child Unit at the Massachusetts Mental Health Center.

Q In addition to your directorship of the facility in Lawrence, what other clinical experience have you had?

A I have had a rather wide range of clinical experience. From 1967 through 1971 I had a part-time or half-time private practice in Brookline. During the years 1967 to 1969

I was a staff psychiatrist and instructor at the Douglas A. Thom Clinic on Dartmouth Street in Boston, and I had a clinical instructorship in psychiatry at Boston University, and then in 1969 I was the head of one of three clinical units at the [39] James Jackson Putnam Children's Center in Roxbury, working with a wide range of minorities and a wide range of socio-economic groups.

I was also chief of community relations at the James Jackson Putnam Children's Center.

Q Doctor, I show you a three-page document. Would you identify that for the Court?

A This is a curriculum vitae I prepared myself.

MR. BEHAR: I offer this as an exhibit.

THE CLERK: Defendants' Exhibit E.

(Curriculum Vitae of Dr. Yerkes
marked Defendants' Exhibit E.)

Q Doctor, have you been an active advocate of children's rights and programs and services for children and adolescents?

A This has been a primary concern of mine, particularly between the years 1968 through 1971 or 1972.

Q What was your involvement in this area?

A At that time, there were many important issues coming to bear in terms of legislation and implementation of services to children, not just mental health services, but many different orders of services to children in the Commonwealth.

I assisted in founding an advocacy organization of which I was a member of the Board of Directors for a number of years, and the particular issues that I addressed myself to and studied in depth were issues involving the new and developing concepts of special [40] education as they have now come into legislation.

Furthermore, I headed a task force regarding child neglect and child abuse to survey and support new legislation in that field.

Q You have indicated that you are a child psychiatrist. Is this a special discipline within psychiatry?

A Yes. Child psychiatry is a further discipline and a subspecialty within adult psychiatry. In my own experience, it required two more years of further training with specialization really in both adolescents and younger children. It has come to have its own professional organization, outside of the adult psychiatric organization, such as the American Academy of Child Psychiatry, and a number of others involving child service clinics.

It has tended also to be a multi-discipline field. The child psychiatrist tends to work very closely with child psychologists, psychiatric social workers and psychiatric nurses.

Q Is there any reason for that evolution of this discipline within psychiatry?

A I think a very important reason. I think that there are certain aspects of child psychiatry that are significantly different from the general field of adult psychiatry. I think the major reason is that children and young people are rapidly developing and rapidly changing individuals, and from one year to [41] another or three years later you are working with an entirely different individual.

I think the backbone of child psychiatry is understanding child development — emotional, physical and mental.

Q About how many cases of children and adolescents have you encountered in your professional career?

A Oh, doing a calculated estimate, I would say over the last seven and a half years of actual practice and four years of training, I would estimate that I have been involved in some 2,000 children, and in most cases their parents along with the

children and adolescents, and I would guess of that between the ages of 12 or 13 and 18, I would guess somewhere in the area of about 800.

JUDGE JULIAN: How many?

THE WITNESS: About 800, sir.

Q Can you generalize as to the range of problems you have encountered in the course of your professional experience in children and adolescents?

A Yes. I believe I have covered a very wide range of problems, not only in terms of psycho-pathological problems or normal development problems, but a wide range of majority and minority groups, Blacks, Spanish-speaking or whatever, and including my private practice and public work, I think I have had a fair representation of cross socio-economic problems.

[42] In addition, the work we do at our center again is a first-line service provider. Often people come directly to us, not referred.

We also work with a network of agencies in the community, children's protective services, family service agencies, our four school systems, both in consultation and work with patients, services in child placement, such as the Division of Family and Children Services at the Welfare Department, and so we work with a wide variety of organizations.

Q Doctor, do you routinely keep up with the medical literature regarding child and adolescent psychological problems?

A Yes, I do. I routinely keep up with it and I attend conferences and conventions.

Q In the course of your practice, have you encountered situations involving pregnancy?

A Yes, I have.

Q In what context have these situations arisen?

A I think that I have probably seen about as many context of pregnancy as possible in terms of being a general community type child psychiatrist. I have seen situations — very frequently the most common are pregnancies and I see the effects upon the family and the other children, and I have seen pregnancies in older married women or unmarried or divorced women which were unwanted pregnancies. I have seen unwanted [43] pregnancies in young women and in adolescents.

Q Did you have occasion to do evaluations, psychiatric evaluations under the old law in Massachusetts?

A Yes. As part of my private practice, prior to the Supreme Court decision involving abortion, on referrals from a number of gynecologists and obstetricians in the Boston area, I performed psychiatric evaluations to provide a consultation and recommendation to those gynecologists and their hospital committees, involving therapeutic interruption of pregnancy.

JUDGE ALDRICH: Are you talking simply about minors?

THE WITNESS: Both minors and mature women.

Q Can you estimate regarding the number of evaluations you did under the old law — can you estimate the percentage of cases in which you recommended abortions?

A Yes. I would estimate, and I think very accurately, it at 90% where I recommended for abortion.

Q Doctor, are there recognized psychological growth goals that take place in adolescence?

A Yes. Adolescence is a particular period of development often divided into two phases, but I think as a phase of development it is that phase which is between childhood marked often by the beginning of puberty and ending with that individual being primarily independent and on their own economically or in terms of their living arrangement, roughly I would say ages [44] 13 through 18. In this period of time there is a struggle to really actualize themselves in terms of becoming a part of the on-going adult world.

In this period it is marked by a high sensitivity to values, a highly discriminating sense of values. It is marked by contrasts. On one day the individual is showing immense maturity. One sees the child underneath with impulsive behavior or changes in terms of their managing feelings.

I think one of the primary problems in adolescence is that of learning how to make wise decisions.

JUDGE JULIAN: Learning how to do what?

THE WITNESS: How to make a wise decision, a decision involving implications of things, not just things on the face of it.

The goals of adolescents articulated by a number of people is that of becoming actually independent, actually autonomous.

Another goal is having a sense of self separate from the family, but also alongside that family.

And the final commonly termed goal of adolescents or developmental task is that of solidifying a gender identity, identity as a man or a woman.

These are processes that take a set period of time. Some emerge sooner into maturity than others. I think that young people vary widely within this period [45] of time.

Q Doctor, based upon your education, training and experience and studies of the literature, do you have an opinion as to what the impact of pregnancy is upon an adolescent given the growth goals you have described?

JUDGE ALDRICH: Adolescent what?

MR. BEHAR: I will ask it again.

JUDGE ALDRICH: I got everything except the last five words.

MR. BEHAR: Given the growth goals you have described.

A Yes. I think that pregnancy, and I am speaking of pregnancy whether in a single or married adolescent, is an immensely important happening. For an unmarried adoles-

cent living with her family, pregnancy has a degree of impact that I would term a developmental crisis. This is a developmental crisis in the middle of these on-going tasks I have described that must be accomplished for maturity in adolescents, and whether it is for better or worse, the appearance of pregnancy is a major disruption of these developmental efforts.

Q Is this a psychological crisis for an adolescent?

A This is very definitely a psychological crisis similar to other kinds of crises the adolescent experiences with one very significant difference. This is a crisis that involves the sense of femininity, the sense of growing sexuality, and I think this is what [46] makes it quite unique.

Q In your experience, are there other situations which involve adolescents in decision making within a psychological crisis context?

A Yes, there are both positive and negative, good and troublesome. For instance, an adolescent changing to another school that they like better. This is a decision which has to be made and weighed carefully. There are troublesome crises, such as dropping out of school or difficulties in flunking out of school. There are crises of death or loss of peers which has a tremendous impact on the peer group in adolescents.

There are the life crises, such as the loss of a parent which can deeply affect the adolescent.

Q Doctor, based upon your education, training and experience and studies of the medical literature, do you have an opinion as to what constitutes good medical practice and mental health practice regarding the resolution of such a psychological crisis as pregnancy?

A Yes, I do.

Q What is your opinion?

A I am of the opinion that an unwanted pregnancy occurring in an adolescent has a very strong impact on the emotional and developmental aspects of that adolescent. This

is an extremely weighty decision, one which falls upon the shoulders of a not yet fully [47] mature individual.

Q And regarding the resolution of this particular crisis, regardless of how it is resolved, what is your opinion as to what constitutes good medical practice and good mental health practice in the resolution regardless of the decision made?

A I think the professional has a very important role here. The adolescent who is pregnant tends to be quite frightened and scared and feels impelled for an immediate solution to the problem. I think the professional has the responsibility to first have an open mind about this matter and say that there are many options to this situation and to carefully and deliberately set the stage for the individual who is pregnant and those important people around that person with all due deliberation to arrive at a solution which is fit with their particular situation.

One must, as a professional, tread the fine line of just being pushed along by the tide of feeling for an impulsive solution versus dragging one's feet and dragging it out so long that it makes things difficult.

I would say that no less than a week of deliberation on this in a very intensive way is necessary and the result should be that that individual ends up feeling that they have made the best possible decision of decisions and that they have done their best no matter what.

[48] JUDGE FREEDMAN: Do you mean by that if a week goes by and a decision has not been reached as to what to do with this unwanted pregnancy, it could create psychological havoc with the patient?

THE WITNESS: Well, I think I choose the week not so much out of a psychological time frame, but often the situation is that it is nearing the third month of pregnancy. I would say that at a minimum something like a week should be

taken. I don't feel that an overnight decision or over a couple of days allows them to sort out the feeling or the feeling-dust to settle around the decision.

There is often very much trouble during this time, a lot of strife and concern. Strife and concern does not mean that the individual is badly off. It may mean that they are getting these things worked out so that they are sitting on a lot of feelings later that they have just pushed down in a kind of impulsive situation.

JUDGE FREEDMAN: Your concerns are related to the psychological development?

THE WITNESS: Yes, very definitely the psychological development, the psychological resolution of these issues.

Q Doctor, you mentioned that people are important to the adolescent. What did you have in mind there?

A The adolescent depending upon age lives in two [49] worlds. One is a world of peers and one is a world of family. In terms of emotionally important people, the family are the oldest. They know the individual the best. They are the people I think should be primarily involved, if at all possible. I feel that the family involvement should be the rule for several reasons.

Q What are those reasons?

A The first reason is that an unwanted pregnancy involves an emotional crisis of at least a month to six weeks duration. There is a waiting decision to be made by the adolescent. Though the adolescent in certain ways may be clear upon what decision would be best for her, I think that on the one hand it puts an undue emotional strain, the strain of responsibility upon that individual to make a decision alone. I think having the family involved and the family and that individual working through a decision together that the teenager feels as though they have support in their decision, and that they have come and arrived at the best decision possible.

I think that without the family being involved, the family is not prepared to support that individual through the crisis of three to six weeks following a therapeutic interruption of pregnancy, and there is the most important matter of making one's peace with the decision that has been made.

[50] I have had certain experience, a couple of cases of the family finding out later and feelings coming out, "Well, you made that decision. You live with it."

Where you have the family making the decision, everyone is committed to carrying out that decision ultimately.

Q Are you saying that one has to take a long-term view?

A I think one has to very importantly take a long-term view. Often what I hear are short-term views, but the long-term view is that of helping this individual come out of a crisis with a minimum amount of impairment emotionally in terms of any subsequent pregnancies at a later time when she is prepared to have babies.

Q Doctor, based upon your education, training, experience and your studies of the medical literature, do you have an opinion what constitutes an informed consent to a procedure such as abortion?

A For an adolescent?

Q For an adolescent under 18. Do you have an opinion?

A I have an opinion.

Q What is that opinion?

A That opinion is that the informed consent must not only entail an understanding technically of the procedure and technically of the risks and physical complications, but it must entail a capability of life experience sufficient to grasp the implications of such [51] a procedure, particularly in regard to the emotional implications — that the feelings involved with terminating a pregnancy do not end with the termination of the pregnancy but go on after a period of time, and these must be faced and dealt with.

Q Doctor, based upon your education, training, experience and studies of the literature, do you have an opinion as to whether there is a correlation between the age of an adolescent and the ability of that adolescent to give an informed consent as described?

A Yes, I do.

Q What is that opinion?

A As one sees increasing maturity during the phase of adolescence, I think that what I have seen is the 13 to 15 year age group tend to not want to be primary in the decision making. They would rather have a decision made for them. I think in that group one has to work to help the child participate in the decision making and not just leave it up to the parents.

In the 16 to 18 year group, I have the feeling that they would like to have greater input into the decision making, but I think they have difficulty, with individual exceptions obviously, but as a rule and as a class I think that they have difficulty in both arriving at the final decision and carrying it through with an understanding of all the implications.

Q Doctor, based upon your education, training, experience [52] and studies of the medical literature, do you have an opinion whether 16 year olds as a class can give an informed consent to a procedure such as abortion within your definition?

A Within my definition of understanding the facts and being able to understand the implications as a rule and as a class I do not think the 16 and 17 year old group are capable of giving an informed consent.

Q Do you recognize exceptions to that?

A Yes.

JUDGE ALDRICH: Do you draw a marked distinction with age 18?

THE WITNESS: I think age 18 is partly a societal mile post in certain ways. That is the age at which the kids are

graduating from high school and go to college, and that is the age that the kids not going to college often move out into their own apartments. It is the difference between contemplating all these responsibilities and suddenly arriving, that they are there and they are responsible for their own lives, and I think this puts a different perspective on things.

One sees this in the last four months of the senior year treating high school seniors. There is an anxiety that they go through in facing that mile post.

Q Doctor, in your experience have you found reluctance [53] in adolescents under 18 to involve their parents in psychological crisis situations?

A Yes. I think it varies. Again, it is individual. The reluctance that I often see in adolescents having some sort of crisis, especially if it is something where they are worried about trouble, there is the tendency to overestimate the response on the part of the parents to their crisis.

My common experience is that in the very serious situations, for example, an unwanted pregnancy, that very often after a bit of flack the families come through and say, "Hey, let's help. Let's do it all together."

Q So your experience has been also in situations where the parents have been notified?

A Yes. Well, in most situations I am notified. In fact, I don't know of any that I haven't. Yes, the parents come through and I think it is an important thing on their part in relationship to their child.

MR. BEHAR: I have no further questions of this witness.

JUDGE FREEDMAN: Are you saying, Doctor, by your last statement that you have only dealt with adolescents where the parents have been notified of the problem of the unwanted pregnancy?

THE WITNESS: Yes, partly out of a personal policy of mine.

[54] JUDGE FREEDMAN: You have never dealt with the adolescent as a patient by herself?

THE WITNESS: In terms of any therapeutic interruption of pregnancy. In terms of other situations, such as treatment at our center, we may with the over 16 law deal with an adolescent individually without the family for an evaluative period. However, after a period of evaluation, we ordinarily insist, even if the family will not participate, that they know and support the treatment of that individual at our center.

MR. REYNOLDS: I have no questions.

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CROSS-EXAMINATION BY MR. LUCAS

Q Is there any form of certification in the psychiatric field for dealing with adolescent pregnancy? I notice that you are certified in adult psychiatry.

A Yes. General psychiatry is the accurate term. The certification in psychiatry is of two kinds. The first is general psychiatry, and as child psychiatry evolved there was a separate sub-specialty in terms of child psychiatry. I am certified in general psychiatry. I am board qualified in child psychiatry. It is a matter of taking the examinations.

Q Do you have to still take both written and oral examinations to obtain that certification?

A Yes, you do. However, may I say it is not uncommon for a child psychiatrist not to be certified. It is not like a licensure or a bar exam. It has nothing to do with that.

Q Did I correctly understand that you in your clinical experience have dealt with approximately 800 patients under age 18?

A Yes.

Q Approximately how many of those patients were pregnant?

A I would say directly and supervisorily it would run in the range of two dozen to 30 personally. One experience I have had is three in-depth studied cases in on-going treatment who during the course of treatment experienced a pregnancy.

Q Do you know how many minors under age 18 were pregnant during the past year in Massachusetts?

A Would you repeat that?

Q Do you know how many pregnant minors there were in Massachusetts under age 18 in the past year?

A I have an impression, but I have no direct knowledge.

Q What range would be your estimate? Do you have an estimate?

MR. BEHAR: I object.

JUDGE ALDRICH: The matter will be material at some point. But if the witness does not know, he certainly doesn't have to guess.

A I know it is increasing, but that is the only impression that I have.

Q Over how many years was your experience with these 800 [56] patients under age 18?

A Well, beginning in my training, I began my adolescent experience on the in-patient service during my adult training and continued many of the cases. I have one adolescent case that I have treated off and on for the last eight years. I would say probably over 12 years.

Q And these 30 pregnancy cases that you dealt with, were these also spread out over that 12-year period?

A Yes, they were.

Q So this would be about one every two years?

A Well, it might be an average, but it does not describe the distribution. I would say that most have been over the last four years.

Q Have you written any articles at all on the subject of adolescent pregnancy?

A No, I have not.

Q Have you conducted any formal studies of adolescent pregnancy?

A No, I have not.

Q Are the types of services that you offer available to all minors in the Commonwealth of Massachusetts?

A Would you repeat that?

Q Are the types of services that you offer available to all minors in the Commonwealth of Massachusetts or do you see them as private patients primarily?

A Do you mean my private practice and clinical practice are particularly in the mental health region? I don't understand.

[57] Q Based upon your experience in this State, to what extent is psychiatric treatment or psychiatric consultation available for pregnant minors in the Commonwealth?

A They are available in our area, I can tell you, both privately and in the clinic.

Q Are they readily available for all minors in the Commonwealth?

A I don't think I am qualified to answer that.

Q Are you a member of the American Psychiatric Association?

A Yes, I am.

Q Do they have a position on adolescent pregnancy?

A They have a position on pregnancy.

Q What is their position on abortion?

A Let's see. It was last spring or summer when I read it. I could only summarize, but it is generally that it is a situation of decision making between patient and doctor.

Q They do not include parents in that statement, do they?

MR. BEHAR: Objection.

JUDGE ALDRICH: He may answer if he knows. He is a member of the Society.

A I don't know. However, I do know that the American Psychiatric Association primarily addresses itself to adult psychiatry.

Q Have they addressed themselves to the problem of [58] adolescent pregnancy at all?

A I read the statement thoroughly and I don't know whether they do. My impression is that they do not.

Q Do you find that minors at a given age vary widely in degrees of maturity?

JUDGE ALDRICH: Would you speak up?

Q Do you find that minors at a given age vary widely in degrees of maturity?

A By minors, do you mean adolescent minors?

Q Yes, under 18.

A Yes, and they tend to vary from day to day, too, in terms of the level of maturity they are operating on.

Q As a class, do you regard married minors as any more competent emotionally than unmarried minors capable of giving an informed consent?

A In that marriage and the way most families deal with married minors, they have the responsibility on their shoulders, and I think they tend to rise to the occasion and can give an informed consent probably more often, but I don't think that one could make that a rule in each case.

Q Do you think unmarried minors rise to the responsibility when they become pregnant of making their life decisions?

A Some of them.

Q Do you think minors under age 18 as a class are capable of giving an informed consent for the treatment of [59] V.D.?

A Yes, I would say so. I think it is a different matter. It is a different problem from pregnancy.

Q In what way is V.D. a different problem from pregnancy?

A I don't know of venereal disease as being a normal psycho-sexual development in pregnancy.

Q Isn't it a frequent part of the psycho-sexual development?

A Not in the terms of the way the psycho-sexual development is a frequent happening in sexual relations. It is not a counterpart psychologically in normal development.

Q Have you had the occasion to be consulted by any pregnant minors since last November?

A No.

Q Have you ever had a case of a pregnant minor who was discussing the subject of abortion with you who objected to your notifying her parents?

A I think we have to consider the two roles I operate in:

- (1) One role was as a therapist and in an on-going treatment situation where an individual became pregnant;
- (2) And another role is having to sit in judgment as to whether under the old law, whether an individual should have therapeutic interruption of pregnancy.

Those two roles don't mix. In the first role, as a therapist, it was more in an advise-and- [60] consent role; and in each and every case, working the matter through, the adolescents themselves consulted the parents. They were worried about it and they thought terrible things would happen, and in all cases terrible things didn't happen. The parents were supportive.

In the other role of making a decision in regard to pregnancy and the interruption of a pregnancy, under the old system prior to this Supreme Court decision, it was required that the parents were involved before they came to me.

Q Of the 30 pregnant adolescents that you had seen, how many of those have you seen since the Supreme Court decision on abortion?

A I have seen one subsequent who came to me subsequent to the abortion.

I have not seen or supervised, I don't believe, any since November.

Q How many have you seen since January of '73?

A January of '73?

Q Is that the date you meant?

A Yes. I would guess probably a dozen or 14.

Q How many of those were seeking, were considering the option of an abortion?

A I would consider — I would guess probably half, somewhere in there. These are fine statistics that I would be afraid I would have to sit down and really calculate up.

[61] Q How do those patients get to you in the first place?

A In terms of most of the experience since '73, it has been through my clinical work since I was fulltime, and on referral from the local drug council, which does a lot of work with teenagers other than with drugs, school guidance counselors and on certain occasions from the families themselves.

Q Of the ones that you have seen since January, '73, I believe you thought you had seen about 14 and about half of those were considering an abortion.

A Yes.

Q What was the outcome of the pregnancies of those half?

A I think about half — maybe 40% of them obtained abortions and we followed through with services subsequent to the abortion.

Q Do you know what became of the other 60%?

A I would say in terms of our follow-up people sticking with us, I would say the other 60% probably had their babies. I think in two cases there was a spontaneous abortion. And the most, there were some married and some — one or two gave up the infant, and I think two of them stayed with their families and bringing up their child.

Q Do you think that 17 year olds as a class are capable of understanding the impact on their future of continuing pregnancy?

A I think they have limitations there, too, and I think [62] they need help in making decisions about having an abortion; they need more help in considering the implications for the future. I think I have seen —

JUDGE ALDRICH: Need more help for which, continuing the pregnancy or abortion?

THE WITNESS: More help in terms of pregnancy, if they are going to keep the child, because it involves an on-going strain of raising that infant.

Q Do you say that continuing the pregnancy is more of a disruption of their life than obtaining an abortion?

A No, I did not. I said that they need more help because there is not an infant that's a product of an abortion, and there is in a term pregnancy.

Q Do you think that in that case, the case of continuing the pregnancy, is, generally speaking, more of a disruption of a minor's life than obtaining an abortion?

A I don't think I could answer that on the basis of what do you mean by "disruption"? Whether emotional disruption or literal disruption — taking out nine months or sometimes having a problem with education and all the other things that come up.

Q Well, it is a disruption in some ways that an abortion is not?

A In terms of time and energy consumed, yes.

Q In terms of emotional impact on the minor in the future?

A I think that is purely individual. I think there are some minors who would be much more disrupted by an [63] abortion and others more disrupted by a pregnancy, and I think it depends upon their condition in the situation largely.

Q Do you think the ability of the 17 year old to give an informed consent to an abortion is purely an individual matter?

A I don't know what you are asking. Are you speaking of a class or —

Q Well, I am asking if the question of whether a minor is competent, whether a minor under 18 is competent to consent to an abortion, whether that is an individual question that varies from minor to minor?

A Yes, they are all individual questions; but I think there are generalizations that can be made around the class.

Q Do you think as many as 40% of 17 year olds are capable of giving an informed consent to an abortion?

A I don't think I am qualified to say on that. I would say some are and the majority are not, and I think it would take some study to do that.

Q How large would you think that majority is?

MR. REYNOLDS: I object to that, if Your Honor please.

JUDGE ALDRICH: He doesn't know, so I don't know why we are going to guess.

Q Do you think it sound medical practice to require the consent of both parents invariably with the minor under [64] 18 seeking an abortion?

A I think as a rule and as a precedent to be striven for, yes.

Q Do you require the consent regardless of the reasons the parents give for it?

JUDGE ALDRICH: Regardless of the reasons that the parents give for withholding the consent?

MR. REYNOLDS: I object to that, if Your Honor please.

JUDGE ALDRICH: I don't think he can answer that. If he can, I would like to hear it.

THE WITNESS: There are other remedies to the situation. I think as a general rule that the requirement of both parents consenting is a sound one in terms of a mental health practice of getting everybody involved to have a bit of the action and the responsibility to commit themselves right from the start.

JUDGE ALDRICH: I think that is a responsive answer.

Q Do you ever encounter instances where the parent — one parent at least — refuses to consent to an abortion?

A Yes, as I have encountered instances in terms of surgery when I was in pediatrics or in blood transfusions.

Q And what reasons do the parents give for refusing consent in such cases?

A Very often it is a value judgment that they do not feel an abortion is morally right. Very often in the [65] situation in the individual raised in that family, even though there may be differing in certain ways, she has that also in her value system.

Q Are there any other reasons that a parent gives for withholding consent?

A I would say that there are certain reasons involving physical health or concerns about emotional health.

Q What percentage of parents in those cases are gynecologists or psychiatrists?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: Excluded.

Q Do you think that emotional support can be provided for a pregnant minor without requiring parental consent?

A Yes.

Q Under what circumstances do you recommend an abortion for a person under 18 from an emotional standpoint?

A Well, these days I don't have to recommend; that's a gynecological decision and I am sometimes in the position of consulting and I try to elicit as thoroughly as possible the

feelings about all alternatives, the feelings of the child toward the pregnancy and thoughts of the infant, and try to help them to come to some resolute decision involving it.

JUDGE ALDRICH: Do you mean by that answer, Doctor, you don't recommend either way?

THE WITNESS: Don't recommend?

[66] JUDGE ALDRICH: Either way. He asked you —

THE WITNESS: Yes, as a rule, when I am consulted at this point, where psychiatric consultation is not part of the decision making, I usually do not take a stance with the patient. I may firm up a stance that they have worked through and say, "Well, that seems to make sense to me"; but I do not take a stance with the patient.

JUDGE FREEDMAN: I thought you answered in direct examination in a question from Mr. Behar that in 90% of the cases psychologically evaluated —

THE WITNESS: Both —

JUDGE FREEDMAN: Both minors and majors, in 90% of those cases, you recommend an abortion. Did you say that?

THE WITNESS: Yes.

I try to keep sorted out my role as a decision maker under the old statute prior to the Supreme Court decision regarding abortion. In that case, one of my roles was to operate giving a recommendation to a gynecologist and a hospital committee. In those cases, where I had to sit in judgment in essence on whether an abortion should be recommended as a medical and psychiatric decision, yes, I did recommend 90% of the cases for therapeutic interruption of pregnancy.

However, since the liberalization of the abortion statutes, my role has not had to be involved [67] in making medical recommendations, but more as working along with the gynecologist or working along with the family and the patients to help them carry out what was best for them.

JUDGE FREEDMAN: In your history of having dealt with two dozen or 30 patients who were adolescents —

THE WITNESS: Yes.

JUDGE FREEDMAN: — did you, as a result of your evaluation psychologically establish a position where you then recommended an abortion in any of those cases?

THE WITNESS: Those in the last four — well, last three years actually — those have been primarily clinical cases. And we again took a therapeutic stance of having or helping the family to come to some resolution. We felt our role was helping them resolve rather than taking an authoritative position or authoritarian position. And as they did all different things, they made different decisions.

Q Do you regard gynecologists as capable of assuming this recommending role?

A In what context?

Q In the context that they are in fact doing it now. Do you feel gynecologists are capable and competent?

A On a medical basis or a medical — psychological —

MR. REYNOLDS: I object.

JUDGE ALDRICH: I will exclude that question. [68] It assumes something and we don't know what it is.

Q You did testify gynecologists were assuming the recommending role which had previously been assumed by psychiatrists for abortions, did you not?

MR. BEHAR: Objection.

JUDGE ALDRICH: I don't myself remember that testimony.

Did you so testify, Doctor?

THE WITNESS: Not to my recall. I may have said —

JUDGE ALDRICH: Well, let's start over again. What is the role of the gynecologist? That's my question.

THE WITNESS: Yes, I didn't know whether you were talking to me.

JUDGE ALDRICH: I was asking you.

THE WITNESS: Well, what is the role of the gynecologist?

JUDGE ALDRICH: Yes.

THE WITNESS: The gynecologist is the individual who has to perform the procedure if the decision is made. Now, I am not a gynecologist. However, I think a comparable medical situation is that a gynecologist has the same responsibility to ensure that there is sensible deliberation on this matter of the patient and the family. And I think in certain cases I would go to general medical ethics that if there were differences [69] between the patient — that is the adolescent patient and her family — that the gynecologist might weigh in the decision and might attempt to either persuade the family or to dissuade a patient if he felt there were a medical indication for it.

But I think they should help them make the decision the best that they can.

Q And in what percentage of cases of a large cross segment of pregnant minors under 18 do you think that an abortion is the better and preferred course?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: I don't know if he can answer that question.

THE WITNESS: I can't.

JUDGE ALDRICH: I wouldn't think so.

Q Do you think it depends upon the individual circumstances of the patient?

MR. REYNOLDS: Objection.

JUDGE ALDRICH: You may answer that.

A I think it depends upon the individual circumstances of the patient and the family and the particular situation in life.

Q I believe you testified earlier that you thought one week of deliberation was necessary for a patient seeking an abortion. Is that correct?

A Well, considering making it in my experience and [70] again, as I have said, at that time, that's not a psychologically determined time frame. In my experience, the matter of one getting together and talking and deliberating on this, that is usually takes about a week to come to some sort of resolution. It is a product of my experience and not any theoretical time frame.

Q Do you think this week ought to take place after a pregnancy is definitely diagnosed?

A It would be hard before. You mean before — when there is a concern about whether the girl is pregnant or not?

JUDGE ALDRICH: Well, what about consent before a girl is pregnant?

THE WITNESS: Where she has missed a period and —

JUDGE ALDRICH: Let's assume she is still chaste — that's an old-fashioned word.

THE WITNESS: Yes, I know it. I assume it is her missing a period which is getting the cause — yes, I think that part of that could be worked through beforehand, but I think when the facts come in, there is very different treatment of the issue by the individual and by her family.

MR. LUCAS: I don't think I have any further questions.

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[71] RE-DIRECT EXAMINATION BY MR. BEHAR

Q I just have one on re-direct. You indicated that in some situations emotional support can be available to an adolescent besides her parents. What sources of support did you have in mind?

A I think that in my thinking, I think in really a sub-class of adolescents, which I think is a minority — the major class, I believe, are adolescents who are more or less functioning in intact families — I think there is a sub-class of teenagers for whom the families either are not filling their role or for whom they already left their families. And I think in this situation medical and mental health professionals have a certain responsibility to perform an emotionally supportive role.

I think, also, in certain cases such as the courts may come into this situation is where there is a disagreement between the child and the parent, and the child is really bearing their responsibility rather well, to utilize court sources.

Q So you are saying they need a responsible adult?

A Not solely because individuals can't make up their mind, but give them company in that very lonely decision-making time and to follow through with them in support until they are over this crisis, yes.

MR. BEHAR: I have no further questions.

JUDGE ALDRICH: Perhaps you have already [72] answered this in the last minute or so, but you testified about the strain that's on the child that has to make a decision alone. And then you spoke later about the child who had parents who regarded abortion to be morally impermissible under any circumstances.

THE WITNESS: Yes.

JUDGE ALDRICH: And, obviously, there are such people with great sincerity. What is the strain that's on the child who has those parents?

THE WITNESS: The parents who feel that abortion is both emotionally and ethically abhorrent?

JUDGE ALDRICH: Not morally permissible.

THE WITNESS: I think a dual strain, one strain may be her own personally felt beliefs, but also —

JUDGE ALDRICH: I would like to assume she didn't have such beliefs, because that's, I would guess, possible, in fact very possible.

THE WITNESS: That she believes differently than her parents?

JUDGE ALDRICH: Yes.

THE WITNESS: Okay. She believes differently than her parents. Very often this sets up an internal conflict with the early childhood conscience being programmed for abhorrent feelings about abortion.

JUDGE ALDRICH: No doubt a great guilt feeling on herself?

[73] THE WITNESS: Yes, and I think — and I don't want to get into conscious and unconscious issues — but I think that even though her manifest belief in adolescence, and it may be an illogical one or thought through belief — may be that the young woman should have an abortion available. I think there is a potential for unconscious guilt here, Your Honor, which is much stronger, say, in a child who grows up in a family that always felt this.

JUDGE ALDRICH: What is the solution for that?

THE WITNESS: I don't think there is a solution, but I think that professionally we can ensure a better working through of those feelings at the time.

JUDGE ALDRICH: With the parent?

THE WITNESS: With the parent or individually with the child.

I am thinking of one individual in particular who it happened with who had a very strong post-abortion reaction for which I treated her, who ended up saying, "You know, I just feel bad and I don't know why. But I know I did the right thing."

So that she was equally as resolved about the decision but still she, I think, had a lot of feelings about it more than another person might.

JUDGE ALDRICH: Thank you.

Do you have any more witnesses, Mr. Behar?

MR. BEHAR: Could we take the morning recess? [74] I want to make a decision as to that.

JUDGE ALDRICH: Yes, surely, not very long.

(Morning recess)

MR. BEHAR: The defendants would have no further evidence to present.

JUDGE ALDRICH: Well, we will be glad to hear arguments.

MR. REYNOLDS: I think my brother was speaking for himself. I have one short witness, if I may.

MR. LUCAS: This is the first we have heard of any further witness, and we have been repeatedly inquiring about witnesses. We would object to any witness we have no notice of.

We don't know the witness' identification —

MR. REYNOLDS: I didn't know any inquiry was made.

MR. RILEY: Your Honor, a telephone inquiry was made about any expert witnesses that were going to be called and actually it was a request for a curriculum vitae of any expert witness that would be called. We are not going to call an expert witness. We are calling one of the parent intervenors in the case.

JUDGE ALDRICH: What is the purpose of this testimony? What do you propose to show?

MR. REYNOLDS: I have a witness today, one of the parent intervenors, who is the parent of a [75] teenage child, unmarried, of childbearing age, and I want to have her testify as to the reasons that she would support the unholding of the statute in question.

MR. LUCAS: We will withdraw our objection. I thought it was an expert witness.

JUDGE ALDRICH: All right, proceed.

MR. REYNOLDS: Thank you very much. I would like to call Mrs. Hunerwadel.

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JEAN HUNERWADEL (SWORN)

DIRECT EXAMINATION BY MR. REYNOLDS

Q Will you give us your full name, please?

A My name is Jean Hunerwadel.

Q Now, where do you live, Mrs. Hunerwadel?

A 121 Gardner Street, Hingham.

Q You are married, are you?

A Yes.

Q What is your husband's name?

A His name is Jean L.

Q And you have children, do you?

A Yes, we do.

Q May we have their ages?

A Thirteen, 12 and 9 years.

Q With regard to yourself, Mrs. Hunerwadel, will you tell us what your education is?

A I have a B.S. degree in early childhood education and child development from St. Joseph's College in West Hartford, Connecticut.

Q When did you receive that?

A 1953.

Q Since that time, outside of the home, what has been your work experience, if any?

A I worked four years at the James Jackson Putnam Children's Center Clinic for emotionally disturbed pre-school children and then, following that, I worked one year as kindergarten teacher at Shady Hill School in Cambridge. I was married following that and then did not work outside the home again until 1970 when I was director of St. John's Community Nursery School in Hingham for two years.

Q Are you affiliated with any of the Pro Life organizations?

A Yes, I am. I am an incorporating member of the Birth Right of South Shore in which I am no longer active, and I am subscribing member to the Massachusetts Citizens For Life from which I receive a news letter once a month.

Q Mrs. Hunerwadel, do you have any personal views on the subject of abortion?

Q Yes, I do.

Q Will you be good enough to tell us what that view is?

A We would regard abortion to be the least desirable alternative to an unplanned pregnancy.

Q Are you familiar with the provisions of Chapter 112, § 12P?

[77] A Yes, I am, generally familiar.

Q Now, I ask you this, Mrs. Hunerwadel, are there circumstances in which you would consent to an abortion to be performed on one of your daughters were she to be found to be pregnant, unmarried and under age 18?

A Yes, there are.

Q Tell us what those circumstances would be.

A We would like to understand the circumstances which led to her pregnancy, the circumstances in her life. We would like to know about the boy by whom she became pregnant, about her feelings about the pregnancy, her feelings about the baby, her feelings about the boy who would be the father of the child. We would like to be able to make avail-

able to her our support and our interest and our care as we have from the time that we have known she was coming to us.

We would like to be sure that she has available all of the alternatives that are available to her and all of the resources in the community, and we would like the opportunity to have her know that we will continue to support her, and if she should decide, in spite of what we were able to show to her in terms of alternatives and support and how we felt, that she just must have an abortion, we would consent to that; but that would not be the end of our involvement.

We would also want to be sure that she had a gynecologist-obstetrician whom we felt was professionally [78] skilled, and beyond that, who had the qualities of interest and sensitivity and humanitarianism which we regard to be important in physicians; and we would also want to be sure that the facility that was chosen in which the abortion were to be done was one which had adequate services all around, because we do not regard the situation of unplanned pregnancy to be a separate situation which is begun, ended and then is out of the youngster's life.

We feel that the youngster, as everybody does, brings feelings of circumstances into the situation and that also circumstances and feelings continue after, whether it is a completed pregnancy or an abortion.

And we would foresee needing follow-up care for this youngster, psychiatrically, probably, at some time if not immediately.

So those kinds of decisions would be very important to us to help her to make.

Q Mrs. Hunerwadel, you are yourself, of course, a former teenager and you have teenage children. In your view, do you consider that young woman under the age of 18 are capable of informed consent with regard to the option of an abortion?

JUDGE ALDRICH: It seems to me we weren't going to have any expert opinion.

MR. REYNOLDS: I wasn't considering it from the standpoint of an expert.

[79] JUDGE ALDRICH: How are we going to be affected by one lady — surely sincere and truthful — but we might as well have one hundred thousand ladies and get their views, if this is your idea of trying the case.

MR. REYNOLDS: Then I would not press the question, Your Honor.

Thank you, Mrs. Hunerwadel.

MR. LUCAS: Could we put cross-examination off to the afternoon session and give me an opportunity to consult?

JUDGE ALDRICH: The fact of the matter is we were going to ask for oral argument forthwith.

MR. LUCAS: We would like to request the Court to have cross-examination. — I think it would be very brief — immediately after lunch.

JUDGE ALDRICH: Well, I suppose we can go to lunch early.

How long is your oral argument going to take?

MR. LUCAS: Approximately 40 minutes would be adequate.

JUDGE FREEDMAN: You don't have any rebuttal witnesses, do you?

MR. LUCAS: No, Your Honor.

JUDGE ALDRICH: Do you plan to file a brief?

MR. LUCAS: We decided not to file a further brief beyond the memorandum and authorities we have [80] submitted.

We have an additional decision from the Supreme Court of the State of Washington, and I have provided counsel from the other side with it.

JUDGE ALDRICH: Very well, you can give that to the Clerk.

How about the argument by you other gentlemen?

MR. BEHAR: I would estimate 20 minutes. I think we have said it in our brief.

MR. REYNOLDS: Mr. Riley, with the Court's permission, is going to give our argument.

JUDGE FREEDMAN: How long do you estimate?

MR. RILEY: Fifteen to 20 minutes, Your Honor.

JUDGE ALDRICH: We can take a recess until 1:30.

(Recess.)

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(AFTERNOON SESSION:)

(1:30 P.M.)

MR. REYNOLDS: I don't know whether Mr. Lucas has decided to cross-examine my witness or not.

MR. LUCAS: Yes, we are ready to go forward with cross-examination.

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CROSS-EXAMINATION BY MR. LUCAS

Q Mrs. Hunerwadel, what is your middle name?

A My middle name?

Q Yes.

A Well, my middle name is Jane if you call me Mary Jane, or my middle name is Maroney if you call me Mary Jane Maroney, or if you call me Jane Maroney Hunerwadel. I sign it both ways.

Q I noticed on the Complaint filed by the intervenors your name is misspelled as was that of four other plaintiffs. Had you ever met with counsel in this case before the lawsuit was filed?

A Before the lawsuit was filed?

Q Before the lawsuit on behalf of you and the other intervenors?

A I had talked with counsel. How is my name spelled?

Q It has a "d" in it.

A Yes, it does have a "d" in it.

Q It does have a "d" in it?

A That is appropriate.

[82] Q I see.

A As long as it is in the right place.

Q There was a letter to the Court changing the spelling of it.

JUDGE FREEDMAN: Has it been corrected?

MR. LUCAS: It seems to be corrected on the face of the Complaint, but the letter of January 23 to the Court is attempting to change it to an incorrect spelling along with that of four others.

Q When did you first hear about this lawsuit, that it was pending?

A It is hard for me to remember just exactly when. I can't remember whether I learned of it in the newspaper or in discussion with friends.

Q Was there a meeting held among the members of the Massachusetts Citizens Concerned for Life shortly thereafter?

A No, not that I know of. I do not attend the meetings of the Massachusetts Citizens Concerned For Life.

Q Are you familiar with the statement of the President of that organization that they were financing this lawsuit?

A No, I am not.

Q Are they, in fact, financing the lawsuit on behalf of the intervenors?

MR. BEHAR: I object.

[83] JUDGE ALDRICH: What is the objection?

MR. BEHAR: I don't think it is relevant.

JUDGE ALDRICH: I haven't quite followed the drift of this argument, but it seems to me he has been suggesting she is not a proper plaintiff. Otherwise, I don't see any point to it.

MR. LUCAS: I am just trying to ascertain whether or not they have standing. Certainly this question has been gone into with regard to Parents Aid Society. I want to ask a few simple questions about the Massachusetts Citizens Concerned For Life.

JUDGE ALDRICH: I notice in the briefs filed with us today by your brethren that there is no longer any attack made upon the standing plaintiffs. Have you abandoned that attack?

MR. BEHAR: I believe in the introduction to our brief we say that we incorporate the memorandum previously filed and not to repeat arguments we would rely on the previously filed memorandum.

JUDGE ALDRICH: All right. So you do still attack the standing?

MR. BEHAR: Yes.

JUDGE ALDRICH: Of every one of the plaintiffs?

MR. BEHAR: That is correct.

JUDGE ALDRICH: Well, then is it not appropriate to discuss the standing of this witness or this plaintiff?

[84] MR. BEHAR: I don't see how the financing of the case relates to the standing of this individual.

JUDGE ALDRICH: It might show what her interest was.

MR. LUCAS: Do we still have a question before the witness?

JUDGE ALDRICH: Yes.

Q Do you know who is financing the lawsuit on behalf of the intervenors?

A No, I don't. I made a small contribution myself.

Q Do you know where the large contributions are coming from?

A No, I don't.

Q One of the issues in the case has to do with the standing of the parties and I have to ask you some questions that I would rather not ask. But do you have any reason to believe that any of your daughters might be in need of abortion services?

A At this particular moment, I hope not but I have no way of knowing.

Q Are you speculating about any future possibility that they might have any need?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: I may be illuminated in due course, but I don't see the objection to plaintiffs' standing or the objection to this lady's standing.

[85] MR. REYNOLDS: Very well, Your Honor.

Q In what way do you think this law may affect you?

A I think that in the event my child, my daughter might become pregnant and might decide to get an abortion without letting us know, that this would be a direct intervention in our communication as a family, parents and child, and we would not want to see her carry this burden of making this decision by herself, and the burden of secrecy which she would carry afterwards in order to keep it from us.

We feel it is very divisive. I was frankly quite outraged by the possibility of parents' consent not being required.

Q Are your views shared by your husband?

A Yes.

Q Do your daughters have any views on reproductive freedom?

MR. REYNOLDS: I object to that question, if your Honor please.

Q Or on the subject of abortion?

MR. LUCAS: I will withdraw that and ask this question.

JUDGE ALDRICH: Very well.

Q Do your daughters have any view on the subject of abortion, as far as you know?

A I don't think they have any definitive one-sided views, no.

Q Have they been exposed to the birth right and right to [86] life viewpoints on the subject of abortion by you?

A They have been subjected to our values and our views, yes. They understand that the unborn child is alive and is a human growing in the womb and that the undeveloped unborn child is a human being. These are what we felt were the positive things and important things to teach them.

Q Are these views you have inculcated in them as part of the family education?

A I would say this is part of our life, yes.

Q Have they had any sex education in your schools?

A Not in the public school, no.

Q Have you been active in opposing sex education in the schools?

A I have been active in opposing certain portions of sex education, yes.

Q What types of sex education have you opposed?

A The discussion of values as to sexual action and freedom as it would pertain to adolescents.

Q Do you oppose the discussion of both sides of the different types of values?

A I feel that the school is not a place for a debate forum on values.

Q What do you think should be encompassed in sex education in the schools?

MR. REYNOLDS: Objection.

JUDGE ALDRICH: No.

[87] MR. LUCAS: I am just trying to get at the bias of the witness.

JUDGE ALDRICH: Excluded.

Q At one time were you a member or were you involved in the operation of the Birth Right organization?

A Yes.

Q Do you understand the policy of that organization to involve counseling individuals who are pregnant?

A Yes.

Q Does Birth Right ever refer individuals for abortions at abortion facilities?

A No.

Q Does Birth Right actively discourage —

MR. REYNOLDS: Objection.

JUDGE ALDRICH: I'm sorry. I was talking to Judge Julian. What was the question?

MR. LUCAS: I was asking her questions concerning an organization by the name of Birth Right that she had been involved with.

JUDGE ALDRICH: We are not interested.

Q Have you been a contributor to the Massachusetts Citizens For Life?

A I contributed a total of two dollars.

Q Have you contributed a great deal of time?

A No, I haven't.

Q You indicated that if one of your daughters became pregnant, you would discuss the pregnancy and the [88] alternatives with her. What would you tell her about the status of the fertilized egg?

A I think we would talk with her about what state of pregnancy she was in at that particular time and deal with her as an individual person.

Q Would you tell her that there was a human being from the moment of conception?

A Yes. We have already told her that and she knows that.

Q Are these religiously based views of yours?

MR. REYNOLDS: Objection.

JUDGE ALDRICH: Excluded.

Q What reasons would you give her primarily if she wanted an abortion and you just disagreed with her?

A What reasons would we give her for our disagreement?

Q Yes.

A I think we would not enter into it in terms of a discussion of disagreement, taking sides, and so on. I think it would be an exploratory kind of thing we would try to do with her in order to come together on the decision-making process. We regard the process of making the decision as immensely important for a family.

Q Would you encourage her under any circumstances to have an abortion?

A I don't think we would encourage her to have an [89] abortion, no.

Q In case she had been raped, would you encourage her to have an abortion?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: Excluded.

Q Would you object to her having an abortion if she had had German measles?

MR. BEHAR: Objection.

MR. REYNOLDS: Objection.

JUDGE ALDRICH: I really don't see the relevancy of any of this examination.

MR. LUCAS: The only relevance is to attempt to show some of the unreasonable grounds on which parental consent could be withheld.

JUDGE ALDRICH: I think you can argue those without producing them from any particular witness. Whether they are reasonable or unreasonable the Court will decide.

Q You indicated in your earlier testimony that there might be some circumstances under which if your daughter decided to go through with an abortion you would support her.

A Yes.

Q What were those circumstances?

A I think the circumstances would be discovered in the decision-making process. If we came to a [90] conclusion, all of us together and probably listening to some professional help: would this seem to be the best course at the time? Under those circumstances, we certainly would support her and would pay for it and we would help to choose the facilities and the gynecologist, and we would see her through it since we are associated with her from the moment of her conception until either one of us dies. We would always be committed to her.

Q Who would have the primary role in selecting the facility under such circumstances?

A I think that it would again be group decision, probably mostly involving her father and me, and the doctors that we would talk with.

Q Have either you or your husband had any medical training?

A Not specifically, no.

Q What does your husband do for a living?

A He is an electronics engineer.

Q If your daughter had an abortion without seeking parental consent, would you attempt to have her prosecuted?

MR. REYNOLDS: Objection.

MR. BEHAR: Objection.

A Oh, no.

JUDGE ALDRICH: You've got the answer.

MR. LUCAS: No further questions. Thank you.

United States District Court
District of Massachusetts

[Title omitted in printing]

Transcript of Testimony

October 18, 1977

* * * * *

[64] JUDGE ALDRICH: Good morning, ladies and gentlemen. First off, the Court will submit 11 MILLION TEENAGERS as an exhibit subject to the limitations that were expressed in open court yesterday.

(11 MILLION TEEANGERS marked Plaintiffs' Exhibit 2 and received in evidence.)

MR. BALLIRO: If your Honor please, with respect to the requests for admissions Your Honor ruled were going to be taken up, and with respect to those we might be able to persuade the Court that indicate prejudice, Miss Schmidt is prepared to argue that this morning.

THE COURT: I am not clear. Argue each one of these matters?

MR. BALLIRO: We have agreed on the great bulk of them. There are very few in controversy.

JUDGE ALDRICH: Have you seen what we received from Mr. Henn?

MR. BALLIRO: I received that a few moments ago from Mr. Henn. I have no way to evaluate that. We have made our own evaluation and have spent a considerable amount of time on it.

JUDGE ALDRICH: You have cut it down to very few?

MR. BALLIRO: Very few.

JUDGE ALDRICH: I think you and Mr. Henn better get together. I will say to Mr. Henn that this does not [65] coincide with the concept that the Court had yesterday, the number you set forth here.

MR. HENN: The first 25 are now moot, so we are only talking about approximately, well, 15 from 48, at random.

JUDGE ALDRICH: You have requests 10 through 35. Are they all moot?

MR. HENN: Moot.

MR. MEYER: We are prepared to waive 10 through 35, and we thought a proper way to proceed was to read into the record the numbers of all those to which there are no objections, which are now additionally admitted, and then plaintiff or amicus curiae could argue at a later date additional ones that they wish struck.

What we would like to do now, with the Court's permission, is to read into the record the numbers of the

additional ones to which no one has objection and to which no further objection will be made.

MR. BALLIRO: I did not intend to bifurcate the arguments with respect to this. I think it ought not take too much time at all.

JUDGE ALDRICH: I think I would be much happier if at the morning recess or the noon recess counsel got together and a written stipulation be prepared and copies prepared for the Court. We don't want to go through [66] the mechanics either of listening to you as you list them off or checking them on our list. Hopefully you can prepare a stipulation which will cover all the matters except those left open.

Whereas you made a moving argument, Mr. Henn, yesterday with respect to how the class was injured, I was more moved by what Mr. Cole said, that the defendants should not be whip sawed between the two of you.

It was pointed out when you were given the authorization that you were given that if you found you were not receiving the proper cooperation from the plaintiffs, you should report that to the Court. That did not mean standing up in court at this late date and saying you didn't like what Mr. Balliro had done.

What is the next matter?

MR. BALLIRO: Dr. Nadelson, if Your Honor please.

MR. RILEY: May I have clarification, Your Honor, of the admission of 11 MILLION TEENAGERS? It is my understanding that only Sections 1 through 3 are being admitted and only the figures --

JUDGE ALDRICH: The statistics?

MR. RILEY: The statistical data and none of the narrative -- only the statistics that relate to abortion in minor girls.

[67] JUDGE ALDRICH: Where the statistics are summarized, in which it says 33% of this, that or the other thing, I assume that was admitted, too, but not the opinion of Mrs. Zilch that minors are particularly susceptible to this, that or the other thing.

MR. RILEY: Only the statistical data?

JUDGE ALDRICH: Only the statistical data in terms and as summarized.

MR. BALLIRO: Shall I proceed?

JUDGE ALDRICH: Please.

* * * * *

CAROL NADELSON, Sworn
Direct Examination by Mr. Balliro

Q Will you please state your name?

A Carol Nadelson.

Q Would you kindly keep your voice up, if you would?

A Carol Nadelson.

Q What is your address?

A 30 Amory Street, Brookline, Massachusetts.

Q What is your occupation?

A I am a physician-psychiatrist.

Q Where are you currently employed?

A Beth Israel Hospital, Boston.

Q How long have you been employed at the Beth Israel Hospital?

[68] A Since 1964.

Q Dr. Nadelson, I direct your attention to the document in front of you that has been marked Plaintiffs' Exhibit 3, and ask whether or not you can identify that document.

A Yes.

Q What is it?

A My curriculum vitae.

Q In addition to the credits and articles and the list of your education and experience recited in Exhibit 3, have you written an additional article soon to be published?

A Yes. There is an additional article -- there are several actually that are not listed that are in the process of being published right now, one of which I gave you the galley for this morning, and then there are two others.

Q Would you merely recite them for the Court and indicate the publications in which they are to appear?

A This one is called Treatment of the Pregnant Teenager and the Putative Father that is to appear in Current Psychiatric Therapies which will be published in January of 1978. The others I have in draft are -- what is called The Impact of Abortion which

will be published in a book called The Woman Patient in June of 1978, and the other one is called The Pregnant Adolescent and that will be published in the American [69] Handbook of Child Psychiatry.

Q You are the same Dr. Nadelson who has previously testified in connection with these matters?

A Yes.

Q At the prior hearing before this Court?

A Yes.

MR. BALLIRO: I offer Exhibit 3, may it please the Court. Copies have been furnished to counsel.

JUDGE ALDRICH: It may be received.

MR. RILEY: I haven't received a copy.

MR. BALLIRO: I hand you a copy, Mr. Riley.

(Curriculum Vitae of Dr. Carol Nadelson marked Plaintiffs' Exhibit 3 and received in evidence.)

Q Now, Dr. Nadelson, have you read Massachusetts General Laws Chapter 112, § 12(p) and § 12(f)?

A Yes, I have.

Q Have you read them in connection with preparing yourself for your testimony at this hearing?

A Yes, I have.

Q Have you read the prior reported decisions having to do with this case?

A Yes.

Q Based upon your reading of the statute and the prior decisions in this case and your experience and your [70] education, do you have an opinion as to the psychological impact on the pregnant adolescent who because of her

parents' refusal to consent to an abortion has to seek to obtain approval from a Superior Court?

A Yes.

Q What is that opinion?

MR. MEYER: Objection.

MR. RILEY: I object.

JUDGE ALDRICH: The question is not, in the first place, sufficiently detailed because it does not include the manner in which she will have to seek permission of the Superior Court.

Q Dr. Nadelson, would you assume as a basis for an opinion the following facts: that a pregnant adolescent seeks approval of both her parents for an abortion and that that approval is refused, that the pregnant adolescent then makes an application to a State Superior Court judge for judicial approval of an abortion.

Now Doctor, do you have an opinion based upon your education and experience -- ?

JUDGE ALDRICH: I will interrupt you right now. Apparently you did not hear my objection to the question. You did not include in your question the manner in which the Superior Court proceedings would have to be carried on. In other words, I can conceive readily of differences [71] connected with how one obtains and must obtain approval of the Superior Court.

MR. BALLIRO: Forgive me, Your Honor.

JUDGE ALDRICH: Is it done in camera?

MR. BALLIRO: I assume she would be including in the hypothesis the methods set forth, such as it has been set forth by the Supreme Judicial Court in its opinion. She has indicated that she has read that.

JUDGE ALDRICH: You are ahead of me there in that my memory does not cover all those details. I remember this much. I don't think they were very detailed.

MR. BALLIRO: That is part of my problem, if Your Honor please. We sought, by way of -- of course, by way of stipulation, which did not happen to be agreed to --

JUDGE ALDRICH: It is still part of your problem, your initial problem in proving the case, and to the extent there may be distinctions in the conduct of the Superior Court, that is going to be part of our problem, too, and we can't get rid of them by not asking about them.

JUDGE JULIAN: In any event, are you limiting the question to the first trimester pregnancy?

MR. BALLIRO: I will do that. I wasn't, as a matter of fact.

[72] JUDGE JULIAN: I suppose the more along in pregnancy perhaps the more susceptible she might be subject to more psychiatric stress and strain. Are you interested in anything beyond the first trimester?

MR. BALLIRO: Frankly, I was not. I will limit it to that and take it in sequence, both the first and second trimester.

JUDGE ALDRICH: All right. I will amend your question for you, if you don't see how it ought to be done.

Let us assume that the Superior Court proceedings will be designed not as they have been presently expressed in the Superior Court rule or as suggested by the Supreme Judicial Court, but in what you would consider to be the most-benign approach that could be made.

THE WITNESS: Do you want me to answer that?

JUDGE ALDRICH: I can't hear you.

Q Yes. Do you have an opinion?

A Yes.

Q Based upon that hypothesis as to the psychological effect upon a pregnant adolescent who is in the first trimester?

A Yes, I do.

Q What is that opinion?

A I think that the impact of the requirement to initiate judicial proceedings of any kind would be [73] severely detrimental to a teenager, particularly since she has just met with her parents' disapproval, which is difficult enough.

JUDGE FREEDMAN: Is that because she would be afraid to go into court or afraid to go into court over her parents' objection?

THE WITNESS: Both.

Q Assuming the same hypothesis, Doctor, with respect to a pregnant adolescent in the second trimester, do you have an opinion as to the psychological effect upon that adolescent?

A It would probably be pretty much the same.

Q Assuming, Doctor --

JUDGE ALDRICH: I am sorry to keep mentioning this, but it would be helpful if we did not have to work to hear what you say.

THE WITNESS: I will try.

MR. BALLIRO: Your Honor, would you like her answer repeated?

JUDGE ALDRICH: I heard her answer. If I spend 20% of my effort trying to hear the answer, then I lose that much understanding what she is saying.

Q Assuming, Doctor, the same hypothesis, do you have an opinion as to the psychological impact on the pregnant adolescent in the first trimester in relation to her [74] family situation?

A Yes.

Q What would your opinion be?

A Well, generally speaking the teenager who is pregnant is apt to be having some difficulty in her family situation to begin with. The request for an abortion which they might not

approve of is certainly going to add to that stress and may further disrupt family relationships. Although we like to consider the family as being concerned about the best interests of their children, there are many times when they are not concerned about that, or at least aware that what they are doing may not be in the best interests of their youngster, and there are other times where it is very difficult for them to know what the best interests may be in a situation that is new to them and that may be quite traumatic to them.

Q Having in mind the statutory requirement, Doctor, to obtain, first, parental consent, if that is possible, and then judicial consent if the parents' consent is not forthcoming, have you, based upon your experience and training, an opinion as to whether or not some pregnant adolescent would seek alternative methods or ways of obtaining their abortion?

A Yes, I do, sir.

Q What is your opinion in that regard?

[75] MR. MEYER: Objection.

JUDGE ALDRICH: She may answer.

Q What is your opinion, Doctor?

A Could you repeat the question?

Q Surely. Having in mind the statutory requirement that an adolescent, a pregnant adolescent must first seek to obtain permission of both parents, and if that is not forthcoming, the judicial approval of consent for the abortion, do you have an opinion as to whether or not some teenagers would seek alternative means of obtaining their abortion?

A Yes.

Q What is your opinion?

A Teenagers in this situation are apt to and have in the past sought to obtain an abortion by means that they may see as less difficult for them and those means may in fact be more dangerous to them ultimately.

JUDGE JULIAN: Can you tell us what those means may be on the basis of your actual experience?

THE WITNESS: On the basis of my experience in the past with this issue, teenagers have sought abortions illegally.

JUDGE JULIAN: That is a characterization. By doing what?

THE WITNESS: By going out of state, by [76] attempting abortions themselves or finding non-medical means of obtaining abortions be it friends or people in the community who are known to provide the services rather than, one, confront their parents, and two, confront any other authority about the problem.

JUDGE JULIAN: Do you happen to know the frequency with which this sort of thing has happened in the past?

THE WITNESS: Well, it is difficult --

JUDGE JULIAN: On the basis of your own experience now.

THE WITNESS: It is difficult to be more specific because people do not report illegal abortions. You obtain the data from histories retrospectively and from people who come into emergency rooms with septic abortions.

JUDGE JULIAN: How many such histories have you had in your experience?

THE WITNESS: In my experience? When I was working in this area at a time when abortions were far more difficult to obtain, we would see -- I would see personally several every week.

JUDGE FREEDMAN: Over how long a period of time?

THE WITNESS: This started from the time I started to work at the Beth Israel until 1973 or 1974.

[77] Q Would that indicate to you, Doctor, that there were a substantial number of pregnant adolescents who would seek alternative means?

A Yes.

Q Do you have an opinion, Doctor, whether or not those that would seek alternative means would more likely than not endanger their health or life?

MR. MEYER: Objection. More likely than not?

JUDGE ALDRICH: What is the objection?

MR. MEYER: I don't know that this witness' expertise would suggest she would be able to answer the question about whether those who sought the abortion would do something to endanger their health. That is a medical question as to what they would so, I suggest.

JUDGE ALDRICH: Do you seriously think there can be more than one answer to that question?

MR. MEYER: I am suggesting, Your Honor --

JUDGE ALDRICH: I asked you a direct question.

MR. MEYER: No, Your Honor, I believe this witness would answer yes.

JUDGE ALDRICH: Not what this witness would answer. Would you suggest otherwise yourself?

MR. MEYER: I will withdraw the objection, Your Honor.

Q Doctor, based upon your education and experience, do you [78] have an opinion as to the relative risks of an abortion in the first trimester as compared to the risks of other medical and surgical procedures that an informed minor is permitted to consent to in accordance with the statute?

MR. RILEY: I object.

A Yes.

JUDGE JULIAN: I don't understand the question.

JUDGE ALDRICH: It's a pretty broad question.

MR. BALLIRO: I was trying to narrow it down.

Q Based upon your education and experience, Doctor, do you have an opinion as to whether or not there is a greater risk attendant to an abortion --

JUDGE ALDRICH: You are referring now to physical consequences?

MR. BALLIRO: Yes, Your Honor.

Q With respect to an abortion on a pregnant adolescent in a first trimester of pregnancy as compared to other medical and surgical procedures?

JUDGE ALDRICH: That is why I said it is too broad.

MR. BALLIRO: Other medical or surgical procedures.

JUDGE ALDRICH: You sort of answered the question. Would you go through some of these?

MR. BALLIRO: Strike it out.

[79] JUDGE ALDRICH: We are interested in the Doctor's qualifications. If she is talking about an appendectomy, maybe she never performed an appendectomy. Maybe she is not qualified to say how dangerous it is.

MR. MEYER: I would suggest, respectively, Your Honor, that her curriculum vitae indicates Dr. Nadelson did her residency in medicine and also her opinion in this regard is admissible --

JUDGE JULIAN: I think when Mr. Riley is objecting, we want to know exactly what he is objecting to.

MR. BALLIRO: I will try to reframe the question.

Q Doctor, based upon your education and experience, do you have an opinion as to what medical and

surgical procedures might be undergone by an adolescent would be more serious in terms of potential harm to the patient --

JUDGE ALDRICH: Physical harm?

MR. BALLIRO: Physical harm to the patient.

Q -- than an abortion performed during the first trimester?

A Based on --

MR. RILEY: The question is does she have an opinion?

JUDGE ALDRICH: Do you have an opinion? Waht [80] is your answer?

THE WITNESS: Yes.

Q What is that opinion?

JUDGE ALDRICH: You object to her giving the opinion?

MR. RILEY: Yes, Your Honor.

JUDGE ALDRICH: She may answer.

Q What is that opinion, Doctor?

A Based on my experience in this area the risk of abortion is less than the risk, for example, of cardiac

surgery, which a teenager, as I read the law, could consent to.

Q Are there other medical or surgical procedures that fall in that same class?

A Yes, there are. I think there are a whole host of them.

Q Would you relate those that you feel fall under this classification?

A I could spend a day doing that. I think basically what we are dealing with are the relative risks of surgical procedures in general, and depending on what the status -- the physical status of the person is, and the anesthetic and other risk factors, there is a classification available about, you know, what the relative risks are. An example that struck me in reading [81] the law is a teenager could properly consent to a hysterectomy and not to an abortion. Hysterectomy is not mentioned specifically in the law.

MR. MEYER: I object to the extent the answer contains a conclusion of law.

JUDGE ALDRICH: The Court will disregard it to the extent it contains a conclusion of law.

Q So you do have an opinion, Doctor, that the physical risk attendant to a hysterectomy is greater than that of an abortion in the first trimester?

A Yes.

Q Directing your attention, Doctor, to the psychological impact of medical and surgical procedures to which an informed minor may consent under the law, do you have an opinion as to whether or not the psychological impact is greater or less than an abortion performed on an adolescent during the first trimester?

A Yes, I do.

Q What is your opinion?

MR. RILEY: Objection.

JUDGE ALDRICH: Do you object to the way the question is phrased?

MR. RILEY: I object to the scope of the direct examination. I believe two and a half years ago Dr. Sturgiss and Dr. Hodgkins testified, as well as Dr. [82] Nadelson, on the relative psychological and medical implications of an abortion. Those matters have not changed despite the interpretation of the statute and the decision of this Court and the Supreme Court, and I think that the direct examination should be limited to the statute as interpreted.

I think that is the sole issue before this Court and that is why the Court decided to take additional evidence.

MR. BALLIRO: This statute was not in effect at the time of the last hearing. It was passed since then, Your Honor.

JUDGE ALDRICH: I am lost now with respect to both of you. First, Mr. Riley, are you saying the witness is being asked questions that have already been fully covered?

MR. RILEY: I believe there was a full opportunity to go into the relative psychological risks and the medical risks of abortion for minor girls at the initial hearing.

JUDGE ALDRICH: Not that it has already been covered, but could have been covered?

MR. RILEY: Has been covered and could have been covered.

JUDGE ALDRICH: Those are two separate matters. [83] To the extent it has been covered, that is a reasonable objection. But are you saying that the witness having testified once the plaintiffs can not pursue the matter any further?

MR. RILEY: This matter would have come up on summary judgment last April except for the factual differences

that occurred as a result of the interpretation by the Supreme Judicial Court.

JUDGE ALDRICH: Not the factual differences in medical practice but the matters that might become more important.

MR. RILEY: It was my understanding that the purpose of this hearing was to obtain evidence on the medical or psychological implications of the -- the impact the statute has as interpreted by the Supreme Judicial Court, and that the general issue of abortions for minors and the medical and/or psychological implications were matters that had been covered in the previous hearing, and unless there are new findings or new medical evidence, I think that it is just rehashing what was covered by the Court two and a half years ago.

JUDGE ALDRICH: Now you are confusing me again when you say that

we are rehashing, we are covering the same matter over again.

MR. RILEY: I think that that matter was fully [84] covered by the evidence.

JUDGE ALDRICH: If it was fully covered, the Court will be very sympathetic to your position. I assume the second part of your objection was that it was not fully covered but it was too late and there were only certain things now open.

MR. RILEY: My specific objection is that this has been covered.

JUDGE ALDRICH: What do you say to that, Mr. Balliro?

MR. BALLIRO: I suggest that the equal protection argument, which we agree is an issue, I suggest that it could have not been covered because Section (f) was not passed until after our last hearing, and this question bears directly on the import of Section 12(f).

JUDGE ALDRICH: Go ahead.

Q Do you recall the question, Doctor?

A Would you repeat it?

Q Yes. Based upon your education and experience, do you have an opinion as to whether or not there are other medical or surgical procedures that have a greater emotional impact on the pregnant adolescent than an abortion that is performed during the first trimester?

JUDGE ALDRICH: She said she had one. Now the question is what is the opinion?

[85] A I think that the evidence that has accumulated, and even more specifically, more recently than the last hearing, seems to indicate that abortion in and of itself does not have serious psychological consequences, and certainly there are procedures, as I mentioned, such as cardiac surgery,

neurosurgery, hysterectomies, which would have more profound psychological implications because they would derive from a situation where the person is either more ill to begin with or the repercussions later on for her life would be more severe.

Q Would you include a mastectomy among those surgical and medical procedures that would have a greater psychological impact than abortion during the first trimester?

A Yes.

Q Based upon your education and experience, Doctor, do you have an opinion as to whether or not the psychological consequences for a pregnant adolescent carrying her pregnancy to term is greater than whether or not she has an abortion in the first trimester?

A Yes.

Q What is your opinion in that regard?

A For the adolescent who does not want to continue her pregnancy being put in a position where she must do so requires that she not only perhaps change her life plans and goals but that she is then responsible [86] for making subsequent decisions which may be exceedingly difficult for her to make, and she may subsequently be responsible for the care of another individual.

Q Would you say that that psychological impact that you just testified to would apply to a substantial number of pregnant adolescents who were forced to carry their pregnancy to term?

A Yes.

MR. BALLIRO: That is all.

JUDGE ALDRICH: Mr. Meyer.

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CROSS-EXAMINATION BY MR. MEYER

Q. Dr. Nadelson, I show you three volumes of transcripts of a deposition that the defendants took of you in the months of August and September of 1977. I ask you if you could identify those three documents, please.

A Yes.

Q Have you had an opportunity to read and sign those three volumes of that deposition?

A I have.

Q I take it you had no corrections to the questions and answers that were taken at the deposition, is that correct?

A That is correct.

MR. MEYER: If Your Honor please, the defendants offer the first two volumes of this deposition in an effort [87] to speed up the cross-examination of this witness as Defendants' Exhibit A.

MR. BALLIRO: I have no objection, Your Honor.

MR. MEYER: We have previously filed copies with the Court, so there are four copies in the record, and we will file the originals now.

JUDGE ALDRICH: What did you want to say, Mr. Riley?

MR. RILEY: We have no objection as long as it is understood that matters of relevancy and materiality can be put in the briefs or argument.

JUDGE ALDRICH: Judge Julian has a very reasonable problem. I assume that counsel are going to argue, preferably brief, what is considered to be immaterial and irrelevant and vice versa because that has to be done at some time. It seems to me that it would be better to do it at present than later and rather than go through the deposition question by question. Our admission does not mean that every bit of that testimony is relevant. I suspect that a great deal is not.

MR. BALLIRO: From my conversation with counsel that all of it was to be considered relevant.

JUDGE JULIAN: What was your understanding?

MR. BALLIRO: My understanding was that he was [88] going to use it as some direct relevant questions to the witness.

JUDGE ALDRICH: And merely for that purpose?

MR. BALLIRO: That is correct, Your Honor.

JUDGE ALDRICH: In other words, it is not in evidence?

MR. MEYER: If Your Honor please, the purpose of putting it in evidence is to have the document in evidence, and to the extent any part of it is considered to be immaterial or irrelevant, and I don't believe any parts of it are, of the first two volumes, I have no objection to anyone arguing in their post-trial briefs

that parts should be ignored. I do not believe there are any that fall within that category.

It is my recollection that the first two volumes pertain exclusively to the witness' testimony concerning the psychological and physiological impacts of abortion.

MR. BALLIRO: As an alternative to that, Your Honor --

JUDGE ALDRICH: We don't need an alternative. That is satisfactory.

MR. MEYER: That exhibit is admitted, Your Honor?

JUDGE ALDRICH: Yes.

[89] (Two volumes of deposition transcript of Dr. Nadelson marked Defendants' Exhibit A and received in evidence.)

Q Doctor, I would like to list several possible motivations that have been reported in the literature as motivations which cause adolescent

pregnancies, and I would ask if you would agree these are in fact motivations that do exist: (1) self punishment?

A Yes.

JUDGE JULIAN: Self what?

MR. MEYER: Self punishment.

JUDGE ALDRICH: I am awfully sorry, but I did not get the first part of the question. This is a list of what?

MR. MEYER: Motivations which the literature has reported cause teenagers to have unwanted pregnancies. I am asking this witness if she would agree she believes that these are motivations which do cause --

JUDGE ALDRICH: Cause them to become pregnant in the first instance?

MR. MEYER: Yes, Your Honor.

JUDGE ALDRICH: I thought that is what you said. All right.

Q (2) replacing a loss?

A Yes.

Q (3) depression?

[90] A Yes.

Q (4) countering deprivation in childhood?

A Yes.

Q (5) hostility to parents?

A Yes.

Q (6) uncertainty concerning the teenager's femininity?

A Yes.

Q (7) a desire to be like the teenager's mother?

A Yes.

Q Are these seven motivations that we have just listed motivations that indicate the need for psychiatric intervention with respect to the adolescent?

A Not necessarily.

Q Do they usually indicate the need for psychiatric intervention?

A No.

Q Do they sometimes indicate the need for psychiatric intervention?

A Yes.

Q Are these seven possible motivations motivations that indicate the need for psychiatric intervention with the adolescent's family?

A Sometimes.

Q Are these seven motivations factors that the adolescent might very well have been unaware of themselves?

[91] A Yes, sir.

Q In fact they would probably be unaware of them, is that correct?

A Yes sir.

Q I would like to read to you, Doctor, several psychological effects that abortion have on adolescents that have been reported in the literature and ask you if you would agree that these are psychological effects that abortions have.

A Could you cite your source?

JUDGE ALDRICH: I can't hear you.

THE WITNESS: I would like to hear the sources cited.

JUDGE ALDRICH: Well, I don't suppose he has to give the source because he is merely asking whether your opinion coincides with the question he is going to put -- rather the statement he is going to put.

Q The first psychological effect is guilt?

A Yes.

Q The second one is a sense of loss?

A Yes.

Q The third one is an arresting of the developmental process?

A You are speaking about abortion?

Q Yes, I am, Doctor.

A Not usually.

Q It can result, is that correct, Doctor?

[92] A It could.

Q The fourth one is an increase in the minor's degree of dependence on the minor's parents?

A Not likely.

Q Can it happen, Doctor?

A I suppose so.

Q The fifth one is a withdrawal from social relations?

A Not likely.

Q It can happen?

A It could.

Q The sixth one is preoccupation with feelings of ugliness?

JUDGE ALDRICH: Feelings of what?

MR. MEYER: Ugliness.

A The last three are more likely to occur with pregnancy than with abortion.

Q Could they result from an abortion on a teenager?

A They could.

Q The seventh one is anniversary reaction?

A Yes.

JUDGE ALDRICH: What is that?

MR. MEYER: Anniversary reaction.

Q Would you briefly explain what that is, Doctor?

A That would be a response often of a depressive reaction or some other symptom which would occur on the anniversary of an important event.

[93] JUDGE ALDRICH: I need a little more knowledge than that.

JUDGE JULIAN: What important event are we talking about?

THE WITNESS: He is referring to abortion. One could experience some symptomology, for example, on the anniversary of the year following an abortion.

JUDGE ALDRICH: Do you mean like birthday you have an abortion day?

THE WITNESS: Yes.

Q The eighth one is severe crying spells upon seeing children of pregnant women?

A That could happen.

Q In fact, all the eight that I listed have been reported in the

literature to your knowledge, is that correct, Doctor?

A I think those have been reported for pregnancy and not for abortion.

JUDGE JULIAN: Which are you attempting to bring out?

MR. MEYER: I was talking about abortion.

JUDGE JULIAN: Make it clear.

JUDGE ALDRICH: He made it clear and the witness did not agree with him.

MR. MEYER: With respect to the specific answers she agreed that they could result. With respect [94] to my general question, whether she agreed that they were in the reported literature, she disagreed.

JUDGE ALDRICH: I see. Well, I don't think she disagreed. Doctor, did you disagree that they were in the literature or was your answer that they were in the literature but more heavily weighted with respect to pregnancy?

THE WITNESS: The latter. They certainly are more heavily reported in the literature on pregnancy.

JUDGE ALDRICH: Both ways?

THE WITNESS: I am not familiar with the last few, the middle statements in the literature on abortion in teenagers.

Q To the extent these eight psychological effects from abortion do exist would they indicate the need for psychological counselling of the teenagers?

A They might.

Q To the extent that these exist would they indicate the need for psychological counselling of the teenager's parents?

A They might.

Q Doctor, are you able to quantify the degree to which these particular results or the frequency with which they would indicate counselling?

A No.

[95] Q Would you tell me what to your knowledge the literature reports as the recidivism rate for unwanted pregnancies among unmarried adolescents?

A That varies with the report you read, and it ranges all the way from about 15% to 95%.

Q Is it correct, Doctor, in your clinic's experience that the recidivism rate is approximately 25%?

A That is what it has been in the past. I don't know what it is this year.

Q I take it that it is correct, is it not, the recidivism rate would vary depending upon the population one is looking upon?

A Yes.

JUDGE JULIAN: On what?

MR. MEYER: The population being studied.

Q Would you agree, Doctor, the 25% figure for recidivism provides a fair estimate of the overall national or statewide recidivism rate?

A Probably.

Q Can counselling of the teenager help reduce recidivism?

A It has been reported to and most people believe it does.

Q Do you believe counselling can help reduce recidivism?

A Yes.

Q Would you tell me, Doctor, and explain to the Court why [96] recidivism is a problem for teenagers who have unwanted pregnancies?

A I do not quite understand the question.

JUDGE ALDRICH: Obviously recidivism is a problem if it occurs. What you meant, I suppose, is why does it occur?

MR. MEYER: I will rephrase the question.

Q Would you describe some of the adverse psychological effects that recidivism of unwanted pregnancies has upon minors?

MR. BALLIRO: I don't think I understood that question.

JUDGE ALDRICH: I thought I did. We will leave it to Mr. Balliro to clear up. You may answer.

A I am not clear on that question.

Q Let me go back a step, please, Doctor. Does recidivism in unwanted pregnancies among adolescents have effects?

A Yes.

Q Would you describe to the Court what the effects are?

A Well, certainly the teenager who has had one pregnancy, depending on the resolution of it, has a different kind of life course and psychological development than she would have had if she didn't. It certainly has been reported, and it

has been true in my experience, that a teenager who has had a pregnancy and has, say, continued [97] the pregnancy, is more likely not to be in school, is more likely to be on welfare, is more likely to have difficulties in relationships subsequently. That has not been reported for teenagers who have had abortions.

I would like to list certain causes of recidivism for unwanted pregnancies in minors that have been reported in the literature and ask you if you would agree if these are in fact some of the causes of recidivism: (1) actions of adolescents are not necessary future oriented?

A Yes.

Q (2) The conceptualization of the adolescent's self as an adult is very difficult?

A Yes.

Q (3) Family difficulties and instabilities which may cause stress, which may in turn lead to pregnancy?

A Yes.

Q (4) Peer pressure?

A Yes.

Q (5) Lack of knowledge of contraception?

A Yes.

Q (6) Despite knowledge of contraception, the lack of the use of knowledge?

A Yes.

Q (7) The belief in mythologies and fantasies concerning the possibilities of pregnancy?

[98] JUDGE ALDRICH: Do you mean the possibility of abortion?

MR. MEYER: The possibility of an unwanted pregnancy.

JUDGE ALDRICH: I still don't know what you mean. Mythology of avoiding the pregnancy or mythology as creating the pregnancy?

Q Dr. Nadelson, the term mythology fantasies is reported in the literature, is it not, as leading to unwanted pregnancies, and could you please explain how that happens?

A Yes. That refers to an idea, for example, that a teenager might have that she could not become pregnant the first time she had intercourse.

JUDGE ALDRICH: That is what I meant by avoidance.

Q Would you agree with the following statement, Doctor, "It really takes most teenagers until the end of adolescence, maybe 18 or 19, before they really have a concept of themselves in the world and ability to make a plan that takes into account what the ramifications of an action like pregnancy may be"?

A Yes, sir. That is not true for everybody.

Q Would you agree with the following statement, Doctor, "A minor's decision to have an abortion may be the first [99] time in that minor's life where they have to determine a life goal which may be immutable"?

A Yes.

Q Would you agree with the follow-up to that quotation, Doctor, that the decision whether or not to have an abortion may have a life-long effect?

A That leaves out the other half of the issue.

JUDGE FREEDMAN: Keep your voice up. I can't hear you.

THE WITNESS: I said that that leaves out the other half of the issue.

JUDGE ALDRICH: I haven't heard you.

THE WITNESS: Well, that has to do with --

JUDGE ALDRICH: I haven't heard your answer.

THE WITNESS: I said that it leaves out the other half of the issue which has to do with pregnancy.

Q In your opinion, Doctor, is it correct that the two to four day delay for the purpose of counselling an adolescent who has an unwanted pregnancy is a proper delay?

A That would be fine.

JUDGE JULIAN: What is your answer?

THE WITNESS: That would be fine.

Q Is it your opinion, Doctor, that a one week delay to counsel an adolescent with an unwanted pregnancy is [100] manageable?

A It depends on the stage of the pregnancy.

Q Would you expand upon that, Doctor, please?

A Well, if someone comes in eleven and a half weeks pregnant, it would be very difficult for her to

have to wait a week because she would put herself in considerable jeopardy physically and emotionally.

Q Did you earlier testify at a deposition, Doctor, that a seven day delay was manageable?

A It depends on the situation.

Q Doctor, you expressed certain opinions this morning concerning the psychological burden of courtroom proceedings. I would like to ask you how many times have you been to court with a patient of yours in some courtroom?

A Do you mean with an adolescent?

Q Yes.

A I have not.

Q With the exception of this case, Doctor, how many courtroom proceedings have you been personally involved in?

A Not very many. I couldn't be more specific than that.

JUDGE FREEDMAN: Do you mean as an expert witness?

MR. MEYER: No. I should make that more clear, Your Honor.

[101] Q How many courtroom proceedings have you been involved in any fashion, Doctor?

A Less than five, I am sure.

Q Does counselling of the teenager who has an unwanted pregnancy and the counselling of her parents always produce agreement on the chosen course of action?

A No.

Q If agreement is not attained by counselling between the teenager with an unwanted pregnancy and her parents, I take it that someone would have to resolve that difference, is that correct?

A Somebody would, yes.

Q Doctor, you have indicated in your deposition that for some teenagers with unwanted pregnancies

parental consultation is objectively contraindicated. Is that correct?

A Yes.

Q Would you explain to the Court what objectively contraindicated means?

A Well, on the basis of the evidence we have the adolescent's parents have been known to be child abusers or are likely to be or are people who are seriously mentally ill or are in some way unable to really be helpful or involved in that situation and might in fact jeopardize the welfare of that youngster.

Q Is it a fair summary, Doctor, when you use the term [102] objectively contraindicated, you mean that when you learn the facts you as a doctor would agree that parental consultation is contraindicated?

A Yes.

Q Is it correct than in your private practice, Doctor, you believe

that parental consultation is objectively contraindicated approximately 5% of the time?

A Not in my private practice; in my work in the hospital.

JUDGE JULIAN: Is there a difference between the two?

THE WITNESS: Yes, there is.

JUDGE JULIAN: State both of them.

THE WITNESS: Well, in my private practice I do not see very many youngsters in this situation. Most of my work in this area is through the Beth Israel and Children's Hospital.

JUDGE JULIAN: With respect to your hospital experience?

THE WITNESS: With respect to my hospital experience that would be roughly correct.

JUDGE FREEDMAN: 5%?

THE WITNESS: Yes.

Q With respect to your private practice, Doctor, what would the percentage be?

A I really can't be more specific than that because the [103] number is not very great, so I don't really have an adequate sample.

Q Let me show you Volume 1 of your deposition, which is Defendants' Exhibit A for Identification, Page 41, and ask if in that deposition you stated words to the effect that in your private practice it probably runs less than 5% and in the clinic it probably runs maybe close to 10%?

A Yes.

MR. BALLIRO: If Your Honor please

--

JUDGE ALDRICH: Well, is that your present answer?

THE WITNESS: That is true. I did say that.

JUDGE JULIAN: What is it then? Is it 10% or 5%?

THE WITNESS: Can I give my personal opinion?

JUDGE ALDRICH: I think we ought to give Mr. Balliro a chance to speak, who may have some problem about the deposition.

MR. BALLIRO: I do, Your Honor please, because I suggest that a very important part of that answer has been left out, namely, the words "that is really a guess".

JUDGE ALDRICH: I think Judge Julian is a little troubled and perhaps the rest of us are that she gave 5% at one time and 10% at another time.

MR. BALLIRO: I merely point out that that is [104] what she answered in the deposition.

JUDGE ALDRICH: All right. You may continue, Mr. Meyer.

Q Doctor, would you explain to the Court what you mean when you use the term or say that parental consultation is subjectively contraindicated?

A That we have specific evidence -- that we know for a fact that something has happened like a father has beaten his child or something like that rather than that we have heard a report that that is so and have not such clear evidence.

JUDGE FREEDMAN: You mean actual case studies that you can rely on?

THE WITNESS: Yes.

JUDGE JULIAN: I don't quite understand the use of the word subjective in that connection.

THE WITNESS: Well, I am just trying to remember the context in which that was said in the first place.

JUDGE JULIAN: Said by whom?

THE WITNESS: I assume it was said in the deposition.

MR. MEYER: Your Honor, may I go to the next question?

JUDGE ALDRICH: Yes.

Q Is it correct, Doctor, that when you use the term subjectively [105] contraindicated, you mean that

in the opinion of the adolescent the adolescent does not want the parents consulted and this may or may not prove out to be correct upon further investigation?

A I want to retread back where we were in the first place. Could you read to me the statements where it says subjective and objective and then I will try to clarify as best I remember?

Q I think we can cut this short, Doctor. Is it true that many adolescents with unwanted pregnancies believe that their parents should not be consulted and that these beliefs prove out to be not correct upon further investigation?

A In some cases that is true, yes.

Q And to the extent that that is true, is it correct that parental consultation is helpful?

A Yes.

Q Could you give me an estimate of how many times in your private practice you have dealt with patients in which the patients have said they believed their parents should not be consulted but upon further investigation it has been determined that the parents should have been consulted?

A I can only make a guess. I would prefer not to be more specific.

Q Do you have an estimate that is based upon actual knowledge?

[106] A You would have to know what percentage of patients I see and what my private practice is like to have it be meaningful.

Q Do you have an estimate for the patients you see at the clinic at the hospital?

A Again, it would be a guess. I do not have the figures at hand right now.

Q Is 40% a reasonable figure, Doctor?

A That is probably close.

Q You testified earlier this morning in response to a question by Mr. Balliro that some adolescents will seek different alternatives if they are forced to courtroom proceedings. I would like to ask you if you would agree that it is impossible to have data on that?

JUDGE JULIAN: Impossible what?

Q It is impossible to have data on that?

A Yes. It is only a guess.

Q I would like to ask you if you agree with the following quotation: "As to the issue of having a baby, a ten year old wouldn't have the foggiest idea what a pregnancy was really unless they had a mother or a sister or somebody who was pregnant around them and that is often the experience but not always the experience of any of us"?

A Yes.

Q Doctor, I take it you are not a surgeon, is that correct?

[107] A That is correct.

Q You are not a specialist in internal medicine, is that correct?

A That is correct.

Q Do you know how often mastectomies are performed on adolescents?

A No.

MR. MEYER: I have no further questions.

JUDGE ALDRICH: Mr. Riley.

* * * * *

CROSS-EXAMINATION BY MR. RILEY

Q Doctor, at your clinic when an adolescent comes to see you or someone on your staff when is the determination of that child's ability to give an informed consent for an abortion made?

A Let me clarify before I answer that question that the question you are asking may refer to a job that I had two years ago and that currently I am not doing exactly that work.

Q Do you make the determination now as to an adolescent's ability to give an informed consent?

A I may on occasion, yes.

Q Generally you do not?

A Personally, I generally do not.

Q When you deal with a patient personally, has that [108] determination been made at some prior time by a psychologist or other physician?

A Yes, that is generally true.

Q So when an adolescent comes to see you, a determination has already been made as to that adolescent's ability to give an informed consent?

A Yes.

JUDGE JULIAN: Your answer is yes?

THE WITNESS: Yes.

Q At your clinic are you concerned solely with counselling for abortions?

A No.

Q Do you counsel for other medical procedures?

A For other medical procedures and for pregnancies.

Q Apart from abortions and medical procedures are there other medical procedures for which there are formal counselling procedures set up at the hospital?

A Oh, yes.

Q What types of procedures would they be?

A A procedure that we would view as having long-term implications where alternatives have to be weighed.

Q These are the types of procedures in which counselling is required?

A Well, there is no such thing as required. You can't force anyone to be counselled. We suggest and try.

[109] Q This is good medical practice?

A Yes.

Q If an adolescent desires to be sterilized, what would be the best medical practice concerning counselling?

A It would probably be very similar to a number of other procedures that would happen. I think what we would start out with is attempting to evaluate the request and the ability of that youngster to make a decision based on whether the youngster understood the implications of what that was and what alternatives there were to that procedure and then work from there.

Q Would the counselling procedure be substantially parallel to the abortion counselling?

A All counselling procedures are roughly similar.

Q When you speak of long-term implications, medical procedures that have long-term implications, would that be concerned with, say, a leg being amputated due to cancer or brain surgery on a child?

A Yes.

JUDGE ALDRICH: Is your answer yes?

THE WITNESS: Yes.

Q If a determination was made that an abortion would not be in the best interests of an adolescent, what would be the psychological implications, if an objective determination was made what would the psychological [110] implications be for that minor if she was to have an abortion?

A Those are two different questions, and I do not have any specific details, so it is hard for me to know how to answer that.

Q Have you ever advised that a minor not have an abortion?

A I don't advise people what to do. I just try to understand what it is they want to do.

MR. RILEY: I have no further questions.

* * * * *

RE-DIRECT EXAMINATION BY MR. BALLIRO

Q Dr. Nadelson, is there a distinction between the psychological impact of a decision to be sterilized versus a decision to have an abortion?

A Oh, yes.

Q What is the distinction that you would draw?

A Well, sterilization is a permanent procedure and at this point there is no recourse on the ones that that happens [sic] and so it is a

procedure with far more serious consequences to anybody. That would certainly be one very important aspect of it.

When one has an abortion, another pregnancy is possible at another time.

Q Do you think it is reasonable to compare, Dr. Nadelson, the need for either parental consent or judicial approval [111] of sterilization as opposed to or as compared with abortion? Do you think there is a reasonable comparison?

MR. MEYER: Objection.

JUDGE ALDRICH: Would you rephrase the question? Perhaps she has already testified to it.

MR. BALLIRO: Perhaps she has already answered it.

JUDGE ALDRICH: I think you might withdraw the question.

MR. BALLIRO: I do withdraw the question. That is all.

MR. MEYER: No further questions.

MR. RILEY: No further questions.

JUDGE ALDRICH: May the doctor be excused?

MR. BALLIRO: Yes, Your Honor.

JUDGE ALDRICH: Thank you, Doctor.

MR. MEYER: With one exception, Your Honor. Some of the requests for admissions that defendants have, which have been already admitted but which plaintiffs and amici --

JUDGE ALDRICH: If they become unstuck, you might like the doctor back?

MR. MEYER: It would be our intention that she might be back as our witness.

JUDGE ALDRICH: That is understood.

[112] MR. BALLIRO: I might say this, Your Honor, that as far as the plaintiffs are concerned we are admitting -- we are not going to be suggesting that any of the doctor's statements contained in the requests for admissions are prejudicial to the plaintiffs.

JUDGE ALDRICH: We are talking about Dr. Zupnick and not Dr. Nadelson.

MR. BALLIRO: In the requests for admissions there are many quotations from Dr. Nadelson's works.

JUDGE ALDRICH: It still might follow that they would like to have something that may be documentary.

MR. BALLIRO: I merely want to point that out, Your Honor. Thank you, Doctor.

Your Honor, that completes the evidence on behalf of the plaintiffs.

JUDGE ALDRICH: We will take the morning recess.

(Recess)

JUDGE ALDRICH: You may proceed.

JUDGE FREEDMAN: You have two witnesses, Mr. Cole?

MR. COLE: We have two witnesses. The first witness is Dr. Sprague Hazard and Dr. Krug will be here after the lunch recess.

JUDGE FREEDMAN: Just to look ahead, do the intervenors have witnesses in addition?

[113] MR. RILEY: No, we do not, Your Honor.

JUDGE ALDRICH: All right.

MR. COLE: The defendants call Dr. Sprague Hazard.

* * * * *

SPRAGUE W. HAZARD (SWORN)

DIRECT EXAMINATION BY MR. COLE

Q What is your name, sir?

A Sprague W. Hazard.

Q Where do you live?

A Deerfield, Massachusetts.

Q Are you a licensed physician to practice medicine in the Commonwealth of Massachusetts?

A I am.

Q Dr. Hazard, would you review for the Court, please, your

undergraduate education, where you went to college?

A I am a graduate of the University of Rhode Island, Kingston, Rhode Island.

Q Where did you attend medical school?

A I went to the College of Physicians and Surgeons, Columbia University, in New York City.

Q When was that, sir? When did you graduate?

A I graduated in 1941.

Q Since 1941 have you been engaged in the practice of medicine?

[114] A I have.

Q Would you review for the Court your post-graduate training?

A Following four years of service as a medical officer, I undertook my post-graduate training in pediatrics at the Children's Hospital Medical Center in Boston. Just prior to that I spent six months in

contagious diseases at the Charles V. Chapin Hospital in Providence, Rhode Island. I spent a total of three and a half years in post-graduate training.

Q After you completed your post-graduate training what position did you assume?

A I went into the private practice of pediatrics, in which I continued for the next 16 years, completing that in 1965.

Q Did you have occasion in 1965 to take a position at Brandeis University?

A I did. I went to Brandeis University as Director of University Health Services.

Q Would you tell the Court, please, first of all, how long you held that position, and, secondly, what were your obligations and duties in that position?

A I was at Brandeis University for just about an even ten years. I was administratively responsible for

developing a comprehensive health program for the undergraduate and graduate students. In addition, my interest [115] in the psychological development of young people, particularly at a time of great national turmoil in terms of the activism and radicalism that was going on in the community, I had certain additional responsibilities in that direction.

Q When you completed your service at Brandeis University, what position did you next take, Doctor?

A I then went out to Deerfield where I was anxious to work with the younger population and I am now director of the health program involving four independent secondary schools in the Deerfield Valley.

Q Are you a member of any medical societies or similar professional groups?

A Yes.

Q Would you recite your principal memberships?

A I am a member of the Massachusetts Medical Society, the Franklin District Medical Society, the one in which I live and work, and at the national level I am a member of the Society For Adolescent Medicine, the Canadian Pediatric Society, and my major emphasis, of course, is with the American Academy of Pediatrics with which I have been affiliated since 1951.

MR. COLE: If I may have the resume of Dr. Hazard marked as Defendants' Exhibit B for Identification?

MR. BALLIRO: I have no objection, Your Honor.

[116] MR. COLE: I move its admission.

JUDGE ALDRICH: It may be marked.

(Resume of Dr. Sprague W. Hazard marked Defendants' Exhibit B.)

Q I would like to turn your attention, Doctor, to your involvement with the American Academy of Pediatrics. Just to refresh my recollection, you have been a member of the Academy for how many years?

A About 25 years now.

Q Would you please tell the Court the nature of the Academy's interests?

A The academy has been the spokesman and advocate of children in this country since about 1933. It is an organization which has made a particular priority of being responsible for children and young people in contrast to being a supportive organization for its membership advancing the material well-being of its membership. Its emphasis has been on the health and welfare of children and young people.

JUDGE FREEDMAN: By "children" do you have a certain age limitation?

THE WITNESS: Yes. In 1972 the Academy indicated that its purview or its area of responsibility was from the moment of conception through 21 years of age.

JUDGE JULIAN: Sometimes you drop your voice [117] and your words become blurred.

Q Will you speak more directly into the microphone, please, Doctor?

A Unfortunately that is a trait of my voice. At any rate, the Academy of Pediatrics in 1972 made a public policy statement in which it indicated its purview was from the moment of conception of the fetus through 21 years of age. Prior to that time it had been traditionally associated with childhood through 12 years of age and then disengaged.

Q Doctor, the Academy has a Committee on Youth, is that correct?

A It does.

Q Will you tell the Court, please, why it does and what the Committee's responsibilities are?

A The first interest of the Academy of Pediatrics became the welfare of young people and this began probably in the late fifties with the appointment of a Committee on Juvenile Delinquency, and this continued for several years. In the early sixties this was reorganized to be a Committee on Youth. This is a committee that is appointed by the Executive Board of the Academy. It chooses people from various geographical sections of the country who have indicated by their record to have special knowledge and interest in the well being of young people.

[118] I was appointed to the Committee on Youth in 1965 and was a member of it for the next nine years. For the first six years I was a member and then become Chairman for the last three years.

Q Passing now to the period beginning around 1970-1972, did the Committee on Youth have occasion to consider the problems related to minors having the ability to consent to health care services.

A Yes, it did.

Q Would you tell the Court, please, why the Committee turned to consideration of that issue?

A As I mentioned earlier in my testimony, the Academy of Pediatrics and the Committee on Youth in particular were increasingly concerned about the circumstances in the community as far as these circumstances affected the health and well being of young people. It was a period of alienation in the community, activism and radicalism taking place at that time, and the position young people put themselves into where they had a change in life styles, and this brought a whole series of new health

issues, the issue of infection, the issue of sexuality which came to the surface at that time, and this required a response of an organization like ours showing an increasing sense of responsibility towards this group.

[119] It was apparent that the young people were doing something about this themselves in the creation of free clinics and alternative kinds of health care which were not within the usual areas of responsibility of the organized community, if you please. It was because of this that recognizing young people with their estrangement from their families, runaway groups, and so forth, that they did not have access to health care, and we felt that changes should be brought about, and these appeared, first, in the area of permitting young people who were involved with drugs to seek health care without transmitting this information to families or

others, and then the area of venereal disease cropped up in some of the States, and it was felt that there were other health issues which young people would not take care of if they couldn't go and take care of it on their own without having to communicate with their families.

On this basis the Model Act for the consent of minors was developed with the hope that this would influence the States to this very serious health issue. There were about 40 million young people in the community, many of which did not have a health care arrangement.

Q Dr. Hazard, you mentioned in your testimony a Model Act which the Committee on Youth developed. I would like to show you a document and ask if you recognize it.

[120] A Yes, I do.

Q What is this?

A The Model Act providing for consent of minors for health services.

MR. COLE: I would like to have this marked for identification.

(Model Act of Committee on Youth re consent of minors for health services marked Defendants' Exhibit C for Identification.)

Q Do you have a copy of it there, Doctor?

JUDGE FREEDMAN: The doctor has indicated that it is in his head and he doesn't need it.

THE WITNESS: I have looked at it before.

Q Doctor, we might just step back for a moment and review the membership on the Committee on Youth at the time at which this Model Act was developed by the Committee on Youth. Who were the people and what were their backgrounds?

A I was Chairman of the Committee at that time and you have my background. Dr. Robert Allen was a pediatrician in California and he was Director of University Health Services at the University of California at San Diego. Dr. Victor Eisner was at the School of Public Health, Berkeley, California, the University of California at Berkeley, and was associate professor at the School of [121] Public Health. Dr. Dale Garrell was a pediatrician who at that time was Chief of Service at Mount Sinai Hospital in San Francisco, California. Dr. Hammar was Chief of Adolescent Medicine at the University of Washington in Seattle. Dr. Thomas Shaffer was at that time Chief of Adolescent Medicine at Ohio State University in Columbus. Dr. Jerome Schen was a private practitioner of adolescent medicine in St. Louis. He was also associate clinical professor

of pediatrics and adolescent medicine at St. Louis University. Dr. Natalia Tanner was a private practitioner in Detroit, Michigan and she was also an assistant professor of pediatrics at Wayne State University, and John Alan Welty came from a small town in southern Texas, Hollington, Texas, where he was a private practitioner in Hollington, Texas.

These people represented not only a geographical spread around the country with some weight towards the West Coast but they represented the academic background as well as the private practice model.

Q Doctor, did the Committee on Youth have occasion to meet several times to consider various drafts and proposals of this Model Act?

A Yes.

Q How many times would you say the Committee met to do that work roughly?

[122] A I would say probably five or six times.

Q Did you attend the majority of those meetings?

A I attended all of them.

JUDGE FREEDMAN: Over how long a period?

THE WITNESS: Over a two year period. I think it should be stated that there were innumerable telephone calls and a great deal of correspondence as well.

Q When did the Committee on Youth finalize its version of the Model Act?

A This was finalized in a meeting in Los Angeles in June of 1972.

Q What next occurred after the Committee finalized its version of the act?

A Then there was the inevitable editorializing and smooth writing that a professional editor did for us, and it was finally published in

Pediatrics, the official journal of the American Academy Of Pediatrics in February, 1973.

Q Is it correct that it appears in Volume 51 of Pediatrics at Page 293?

A Yes.

Q Was there any kind of other approval either by the American Academy itself or its Council on Child Health which this Model Act received?

A Before any document such as this can go before the [123] Executive Board of the Academy, which grants final approval, it has to be passed by another structure within the Academy called the Council on Child Health, and they review the document and its appropriateness, makes corrections or suggestions, and then it goes back to the Committee and may be partially rewritten, and so forth, and then goes back to the Council again, the final draft goes to them, and then it has to go to the executive board where it has

receive final approval before it becomes an official document of the Academy of Pediatrics.

Q And this document went through those steps?

A It did.

Q And received approval and is therefore an official document of the American Academy of Pediatrics.

A Yes, it is.

Q Doctor, will you describe to the Court the basic structure of the statute concentrating, if you would, please, on its general rule concerning the consent of minors to health care?

MR. BALLIRO: Your Honor, I respectfully, Your Honor, would think that the document would speak for itself in that regard.

JUDGE ALDRICH: I would have thought so.

MR. COLE: I am prepared to offer it, Your Honor, at this point and it will speak for itself.

[124] MR. MEYER: I have no objection, Your Honor.

JUDGE ALDRICH: Exhibit C.

(Defendants' Exhibit C for Identification received in evidence.)

Q Doctor, turning your attention now to Defendants' Exhibit C, which is the model statute, I call your attention to Section 6 which reads, "Self-consent of minors shall not apply to a sterilization or abortion". Would you tell us, please, Doctor, why the Committee on Youth of the American Academy of Pediatrics determined that the provisions of the Model Act should not apply to sterilization or abortion?

A To preface my remarks in response to your question, I feel it is my responsibility to tell the Court that this was a point of great debate

in the development of this document, that there were members of the Committee who felt that this section should not be included, rather that minors should have the right of consent with regard to sterilization and abortion and there were others who felt otherwise.

A great deal of consultation went on with other members of the Academy outside the Committee, beyond this particular group, in coming to this conclusion. However, at the time that the final draft was made the entire Committee was in agreement that this should be [125] the position that would be recommended to the Academy of Pediatrics as an organization representing itself on this point to the community-at-large.

Q Would you give the Court some specific examples of the nature of the controversy, the views of the individual committee members and how

this was resolved ultimately in this version of the Act which is now in evidence?

A Well, as in all groups considering this point, there is the all or none group and on the opposite side the more conservative, morally oriented, ethically considerate group, who felt that this part should be a family decision as much as is possible rather than a decision of a minor. And I would guess or would say that this was the range of decision that went on over this point.

The ultimate viewpoint of the Committee was that in most instances the well being of the minor involved in the pregnancy, the girl involved in the pregnancy, the best hopes for her future, the best hopes for the family as an effective unit, including this girl, were such that this particular health issue should be shared with the family.

I think this is my answer.

Q Turning more directly to a narrow alternative in the statute, I note that the statute does permit two physicians in certain instances to concur in a treatment program for [126] the adolescent or minor but that this was not an alternative of choice as to abortion or sterilization. Would you tell the Court why the Committee did not feel the views of two physicians would be adequate safeguards in this area of abortion and sterilization?

A It has been presented earlier this morning by the deposition of Dr. Nadelson that indeed there are going to be circumstances where others -- can you hear me?

JUDGE FREEDMAN: Go ahead.

A (Continuing) -- others are going to have to participate in this decision besides the family.

MR. BALLIRO: Respectfully, Your Honor, I object. I would suggest that the preface indicates that his answer is going to be argumentative.

JUDGE ALDRICH: I suppose he has a right to express an opinion.

MR. BALLIRO: Well, I don't take it that he is now expressing an opinion, Your Honor. I take it that he is now going to distinguish his testimony from the views expressed by Dr. Nadelson in her deposition, if I understand what he is saying.

JUDGE ALDRICH: Why shouldn't he?

MR. BALLIRO: It is not responsive to the question, first of all, and in this form it is argumentative.

JUDGE ALDRICH: Let's get to the meat. Why [127] shouldn't he express an opinion?

MR. BALLIRO: I do not have any objection to his expressing a different opinion. I am merely saying that in the manner in which he is doing it it is in an argumentative way.

JUDGE ALDRICH: I don't follow you.

JUDGE JULIAN: I don't follow you.

JUDGE ALDRICH: All opinions are argumentative, aren't they?

JUDGE JULIAN: Otherwise it would be a fact and not an opinion.

MR. BALLIRO: Well, I do not have any strong objection, Your Honor.

JUDGE ALDRICH: All right.

Q You may answer.

JUDGE ALDRICH: I think it would be best if it were responsive to the question. I think I agree with Mr. Balliro on that.

Q Would you, Dr. Hazard, tell the Court, please, why the Committee determined that the safeguard of two physicians' consent and which the Committee determined was sufficient in the cases of most medical and surgical procedures and would not be sufficient in the case of an abortion and sterilization, and in responding to

the question, please state why the Committee felt this way and we will get to [128] your opinion later on.

A Thank you. I thought I was in trouble when I mentioned Dr. Nadelson's name anyway.

I would like to repeat what I said earlier that it was the opinion of the Committee that the best chances for the adolescent girl who was pregnant for her future and for that of the family would be if this particular information were shared with them. I think it is to that effect that I responded.

JUDGE FREEDMAN: Did the Academy or the Committee of the Academy have evidence to support that conclusion, case studies either way, before reaching that conclusion?

THE WITNESS: I think this conclusion was based on the experience of members of the Committee, and certain basic contentions of the

Academy, of the importance of the family unit, particularly at a time of crisis, i.e., the pregnancy of a daughter, and the contention was that indeed if this could be handled this way, it often was effective in bringing the family back together and strengthening relationships between parents and daughter.

Q Dr. Hazard, in your own professional opinion as a pediatrician, a person particularly concerned over the years with the welfare of minors and adolescents, do you [129] yourself have an opinion as to the appropriateness, the sound professional judgment, in the nature of professional judgment in this case of this statute's exemption of abortion and sterilization procedures from its general rule of the minor's ability to consent to health care services represents?

JUDGE FREEDMAN: Are you talking about this statute?

MR. MEYER: This statute.

Q Do you have an opinion as to that matter?

A I do.

Q What is that opinion?

MR. BALLIRO: I object.

JUDGE ALDRICH: I will take it. You may well persuade us it is irrelevant, but I will hear it or we will hear it.

A It is my opinion that in the adolescent, particularly the young adolescent who is in the midst of her important psycho-sexual development that she needs dependable resources to resolve some of the issues associated with her current situation, i.e., her pregnancy and the possible interruption of it.

She certainly needs an opportunity to be heard with respect to those circumstances that led to her pregnancy.

[130] The issues of counselling have been brought out, and certainly the return of this girl to her family and the resolution of the differences which may or may not be related to the pregnancy itself, should be worked out.

There is a point which I would like to emphasize as well with this rhetorical observation and that is how important it is for parents to have counselling at this time, too. Their feelings of anger, and of guilt, their feelings of what they went through as adolescents themselves need to be talked out in order to be able to properly support and encourage this girl and hopefully get her back into the mainstream of successful development as an adolescent.

MR. BALLIRO: Respectfully, Your Honor, I object and ask that that portion of the witness' answer that has to do with the need for parents'

counselling be stricken. I would suggest it is not relevant to the question asked.

JUDGE ALDRICH: Well, we will let it stand for the time being.

MR. MEYER: We have no further questions, Your Honor.

JUDGE ALDRICH: Thank you.

JUDGE FREEDMAN: Doctor, I have one question. [131] Was it the intent of the Academy in promoting the Act and hoping that the Act would be carried forward into execution more in line with the preservation of the family unit or the health of the child both physically and psychologically?

THE WITNESS: The prefatory note in it indicates both. There was a need to be able to respond to the health issues involving the minor. At the same time there was equal emphasis expressed in the prefatory note about the importance of the family in relationship to the health of the young people.

JUDGE ALDRICH: You said there was disagreement on the Committee at one time. Did that express your particular view?

THE WITNESS: No, it did not, no. My particular view was the importance in trying to preserve or rebuild family integrity and a health issue might be the basis for it.

JUDGE ALDRICH: Thank you. Mr. Riley, do you have any questions?

MR. RILEY: No, Your Honor.

JUDGE ALDRICH: Mr. Balliro.

* * * * *

[132] CROSS-EXAMINATION BY MR. BALLIRO

Q Dr. Hazard, as I understand your testimony it was not until the year 1972 that the American Academy of Pediatrics decided that its goal should include concern with persons from the age of birth until 21 years of age; is that correct?

A As a national policy or an expressed policy of the organization, it had made a considerable investment in the well being, the health and welfare of young people, probably for about 12 to 14 years.

Q You testified on direct examination that up until that time, 1972, the Academy concerned itself with children up to 12 years of age.

A As an official policy, yes.

Q And that concern, I take it, did not involve to any substantial or material extent the pregnancy of adolescents up to 12 years of age?

A May I respond to that?

Q Please do.

A In 1970 or 1971 the Academy put out a statement on the role of the pediatrician and the pregnant adolescent girl. This is an official document that I have a copy of. It went through the several sequences that I spoke to you about and it was

an expressed policy about the responsibility of the pediatrician who was caring for the [133] young adolescent patient who found herself pregnant. So this policy had been well established and expressed before.

The statement to which I refer was a combined expression in the sense of the American College of Obstetricians and Gynecologists and the American Academy of Pediatrics when it was published.

Q Did that paper concern itself with the pregnancies of women up to the age of 21?

A It did not express an age as such. It spoke in terms of adolescent girls.

Q Was that the only paper published by the American Academy of Pediatrics concerning adolescent pregnancies?

A As far as I can recall it was.

Q So that it is fair to say, is it not, that insofar as it being a major or a substantial concern of the American Academy of Pediatrics its interest in adolescent pregnancy is relatively new?

A You are right.

Q Now directing your attention particularly to the Model Act that has been introduced in evidence, when was it you began holding committee meetings with respect to that Model Act?

A I can only approximate that, but I think it was in a January meeting in 1971 when the discussion started: [134] should we try to develop a Model Act?

Q You indicated in your direct testimony, Doctor, that the process of meetings took place over about a two year period of time?

A That's correct.

Q And that in June of 1972 for all practical purposes the Act had been drafted and from that point on it went through only those channels that were necessary to polish up the language?

A Yes.

Q So is it fair to say that the five or six committee meetings that you refer to that went into the preparation of this Act began sometime in 1970, some two years or so prior to June of 1972?

A I regret that I can not date it.

Q I am not going to ask you to date it with certainty, Doctor.

A I have documentation back in my bag there.

Q Do you want to change your testimony that it took place, the preparation of this Model Act, over approximately a two-year period of time?

A I am satisfied with two years.

Q What would you change your testimony to?

A I think that if you are asking me to give the exact date as to when this first took place, I can not do that.

[135] Q I won't ask you for the exact date, Doctor. I will frame another question for you, Doctor. What is your best memory as to when the Committee was first organized?

A Which Committee do you refer to?

Q The Committee that led to the Model Act providing for consent of minors for health service.

A This Committee was first organized in 1962. The Committee on Youth was organized in 1962.

Q At some time you became Chairman of the Committee on Youth. I would assume that a subcommittee or

the like was specifically designated to prepare a Model Act, is that correct?

A You have given me an important landmark to go by.

Q Fine.

A I became Chairman of this Committee in October of 1971 and I was Chairman for the next three years, until October of 1974, when I retired from the Committee to go on the Executive Board of the Academy.

Q Having in mind that you became Chairman of this Committee in October of 1971, were you aware when you became Chairman of any committee meetings or the compilation of data or work that had been done that went into the final draft that became this Act?

A This was one of the first agenda items we took up when I was Chairman.

[136] Q In October of 1971?

A Correct.

Q Having in mind that it is your testimony that for all practical purposes the final draft was completed in June of 1972, is it now fair to estimate that the time that was spent in preparing this Model Act took place over approximately an eight or nine month period of time?

A I would think you are correct, yes.

Q And all of that period of time was before abortion was declared legal by the United States Supreme Court, isn't that correct?

JUDGE JULIAN: What was the date?

Q Do you have any knowledge when the United States Supreme Court spoke out with respect to the legality of abortion?

A I do not.

Q If I suggest to you it was on January 23, 1973, would that help refresh your memory?

A I would have no reason not to accept that.

Q Is it fair to suggest to you, Dr. Hazard, that in preparing this Model Act providing for consent of minors for health services, and with respect to that part that has to do with abortion and sterilization of minors, that a primary or the major factor in the Committee's mind was the fact that at that time abortions were not legal?

[137] MR. COLE: Objection. Abortions were quite legal at that time.

JUDGE ALDRICH: I think that is so.

MR. BALLIRO: Well, legal in the sense --

JUDGE JULIAN: What was the date of the Opinion?

MR. BALLIRO: January 23, 1973, Your Honor.

MR. COLE: As we all know, the question that the Court considered was not whether abortions were legal --

JUDGE ALDRICH: Your objection is sustained.

Q To what extent, Dr. Hazard, did the Committee take into consideration in expressing its view with respect to the availability of legal abortions to minors?

A It was readily apparent to the Committee that abortions were being carried out on minors in various sections of the country, and I think this was one of the issues that they did feel they had a responsibility toward and the fact that there were attendant serious consequences.

JUDGE ALDRICH: Excuse me. You said they were carried out. But they were carried out by reputable doctors in hospitals or were you including undercover abortions?

THE WITNESS: I think the majority were being done under circumstances other than in recognized health organizations.

[138] JUDGE ALDRICH: I thought that is what you meant.

Q You testified on direct examination, Doctor, that the Committee met some five or six times; is that correct?

A Yes.

Q When was the first meeting?

A The first meeting at which I was Chairman was October of 1971. The next was in January, and the next meeting was in May and the next meeting was in June.

Q You have now described four meetings.

A Four meetings.

Q So you want to change your testimony --

JUDGE ALDRICH: No. He has not finished.

MR. BALLIRO: I am sorry. I thought he had, Your Honor.

A Then it went before the Council on Child Health in July of that year. I was a member of the

Council on Child Health, at which time there was need for some persuasion and for minor changes and it went back to the Committee but the final changes were not based on a formal Committee meeting, but based upon the mail and telephone.

Q So far as meetings between yourself as Chairman and the eight other members of the Committee whose names you have recited and whose names appear on the exhibit, it is [139] fair to say there were four meetings --

A That is correct.

Q -- that led to what was substantially the final draft of the Model Act?

A That is correct.

Q Where did the first meeting take place?

A Where?

Q Yes.

A I don't recall. The first meeting takes place during the annual meeting. I don't remember where it

was in 1971. I can document this if you wish.

Q Was it in a city other than Boston?

A Oh, yes.

Q Somewhere in the middle west of the country?

A The annual meeting of the Academy moved from Chicago to New York City -- from Chicago to San Francisco and then back and forth across the country. Where it was in October, 1971 I don't recall.

Q But, at any rate, the first meeting you referred to as taking place in October took place at the annual meeting?

A Correct.

Q How many days do your annual meetings take?

A The plenary sessions run four days. There are additional sessions that extend from six to seven days.

Q Did it fall upon your role as Chairman of the Committee [140] to designate or to appoint who the Committee members were going to be?

A The Committee members were appointed by the Executive Board of the Academy.

Q With respect to this Committee when did the Executive Board of the Academy make the appointments of the Committee members?

A This would be something that I can't recall in detail. I would say this, that each Committee member is appointed for a period of three years, at which time a decision is made whether to reappoint this individual for another term of three years or not.

Q Were the appointments to your Committee made at the annual meeting in October, 1971?

A The appointment process begins in the early spring or it did at that time and a list is prepared by

a special committee on committees and it is presented to the Executive Board for their consideration. At that time the committees were appointed in July of the preceding year at the annual meeting.

Q These members, including yourself as Chairman, took office at the October annual meeting of the Academy?

A That is correct.

Q Were all of the members of the Committee present at that annual meeting in October of 1971?

[141] A I can't recall that.

Q Is it likely that they were?

A It is likely they were all not there.

A Do you have any memory as to how many members of the Committee were not there at this meeting in October, 1971?

A I wouldn't have any way of remembering that. I do not know that

attendance at the annual meeting is not apt to be a full committee meeting.

MR. COLE: Your Honor, I will wait for the next question but --

JUDGE ALDRICH: Are you suggesting that we are putting a lot of time into this?

MR. COLE: Yes, Your Honor.

JUDGE ALDRICH: I would agree.

MR. COLE: That was the nature of my objection. I do not see its relevance.

JUDGE ALDRICH: It may be relevant, but it seems to me, Mr. Balliro, unless you have something specific --

MR. BALLIRO: Well, Your Honor, the weight, of course, is for the Court.

JUDGE ALDRICH: I know. But how many members were present at what time and so forth, I can't think of much grist left in the mill.

[142] MR. BALLIRO: I would like to go into this very briefly, Your Honor.

JUDGE ALDRICH: All right.

Q How long did the first meeting last?

A Well, these were brief Committee meetings and I dare say three hours.

Q Would you say that was so with respect to the January, the May and June meetings as well?

A No. These are workshop meetings and go on for two full days.

Q And the October meeting?

A No. The workshop meetings go on for two days.

JUDGE ALDRICH: Subsequent to October?

THE WITNESS: Yes.

Q So in toto how many hours of Committee meetings would you say were spent in the preparation of this Act?

A If you are referring to the time when we were all together, that is one thing. If you are talking about the time spent on this document, that is an entirely different thing.

Q As far as you all being together -- ?

A Well, eight or nine hour days when we would meet -- I would suppose 50 or 60 hours. But this represents just a modest contribution to the ultimate document. Work was done at home.

[143] Q Am I correct in assuming, Doctor, that in selecting yourself as Chairman --

A I was not selected by myself. I was appointed by the Board.

Q I'm sorry. In your being appointed Chairman of that Committee and with respect to the appointments of the other Committee members, the fact of your or their particular experience with respect to adolescent pregnancy was not a major factor?

A I do not agree with that.

Q Will you tell us to what extent and the degree to which you were aware either your experience with pregnant adolescents or those of the other committeemen were taken into consideration by the Executive Committee when they made the appointments?

These nine members of the Committee were not appointed to the Committee because they had particular experience in adolescent pregnancy. I would no way hold that as a basis for appointment. They were appointed because of their extensive recognized experience with the health needs of young people.

Q I assume you yourself had not had much acquaintanceship or contact with adolescent pregnancy.

A That is correct, only as a Director of University Health Services.

[144] Q In a very general way?

A Well, as a resource for young people who had become pregnant and who were in college. That is not a very general way, but a specific way.

Q Have you had the opportunity of counselling youngsters, teenagers that were pregnant?

A Indeed.

Q Over how long a period of time?

A This was during the period that I was at Brandeis over a ten year period of time.

Q How old were the teenagers that you were counselling?

A Well, the teenagers would be from 17 up and the young adults about 24. That is a different age group than I am working with now.

Q Can you tell us with respect to each of the doctors whose names appear on the Committee what you know of their particular experience with respect to treatment or counselling of pregnant adolescents?

A Well, Dr. Eisner is one who was in an academic posture where he would have no opportunity.

Q Do you know of your own knowledge that they had experience in the treatment and consultation of adolescents that were pregnant?

A I have no reason to believe that not every one of them had experience.

[145] Q What knowledge so you have of their having has experience?

A What they had related at Committee meetings as to the experience that they had had. I do not have any documentation of this -- whether this was their first or their third pregnancy.

Q Doctor, your experience principally has been with the health concern of young people in colleges or schools, is that correct?

A Since 1965. Prior to that time my experience was with general

pediatrics and younger children by and large.

Q And as a result of that experience can you give us an opinion as to the extent to which teenagers were reluctant to discuss with their parents problems having to do with their use of drugs?

A I could not give you any specific data on that.

MR. COLE: Your Honor, I move that go out on relevancy grounds. There has no discussion of drugs.

MR. BALLIRO: This is preliminary, Your Honor.

JUDGE ALDRICH: It would seem to me to be a valid preliminary. We are testing the experience and capacity of this witness.

MR. COLE: Yes, Your Honor.

MR. BALLIRO: I will rephrase the question.

JUDGE ALDRICH: We will take the question. He said he couldn't answer it. Go ahead.

[146].Q Doctor, from your experience can you give us an opinion as to whether or not generally speaking adolescents who become involved with the use of drugs are or are not willing and anxious to discuss those matters with their parents?

A At first approach it would be my opinion that they would be reluctant to discuss it with their parents. I would like to respond further to that.

Depending upon the care situation in which they find themselves --

JUDGE FREEDMAN: The what kind of care?

THE WITNESS: The care situation that they find themselves in, the interests and the skills of those caring for them in this particular situation, it would be my opinion that sharing this information with parents and reviewing the background of it, how they become involved, and the

extent to which they became involved and whether indeed there were family dynamics which might influence their involvement in drugs could better be attended to.

JUDGE ALDRICH: Could what?

THE WITNESS: Could better be attended to.

JUDGE ALDRICH: Is that responsive to the question?

MR. BALLIRO: Perhaps I had better put the [147] question again.

JUDGE ALDRICH: The question is not whether it would be better if they did. The question is whether they did.

THE WITNESS: At the first visit they are reluctant to share it with the parents.

JUDGE ALDRICH: And then later did you mean they became persuaded to discuss it?

THE WITNESS: Yes.

Q In all cases?

A No, I wouldn't say in all cases.

Q Would there still be a substantial percentage of cases where after counselling the adolescent expressed a great deal of reluctance to discuss the matter of a drug problem with their parents?

A I have no data to support that. It would be my impression that the success in getting adolescents to share their involvement with drugs would not be very high.

Q It would be your impression that they would be reluctant?

A Reluctant.

Q Would your opinion be the same with respect to the adolescent's desire or willingness or eagerness to discuss a problem of venereal disease with their parents?

A I think that they would be reluctant to discuss this with their parents.

[148] Q How about a pregnant adolescent? Do you have an opinion as to the extent to which a pregnant adolescent would be reluctant to discuss the matter of that pregnancy with her parents?

A I don't know what it is you are trying to get me to say. I would qualify your question by saying that at first contact adolescent girls are reluctant to discuss it with their parents.

Q Is it fair to say that with careful counselling a great number of those would then discuss it with their parents?

A Yes.

Q But there would still be a substantial number who would be reluctant to do so?

A Yes, sir.

Q As I understand your testimony, Doctor, you say that the ultimate view of the Committee was to

take the position that is described in Section 6 with respect to self-consent of minors as not applying to sterilization or abortion. That was the ultimate view, is that correct?

A Yes, it was.

Q Is it not fair to say that the reason to some extent for that ultimate view was so that a united view could be presented to the community?

A I don't think the Committee made its decision based on future public relations of this statement, but rather [149] that it was an educational process as we developed this and it was the considered opinion of the entire Committee that this should be the viewpoint.

Q You had a committee of yourself and eight other doctors. Is it not fair to say that that Committee like most committees made compromises with respect to the way that the Act

was ultimately to read or what in substance it was to contain?

A Is that a question?

Q Yes.

A I would agree that it is inevitable that compromises are made when preparing a document like this.

Q And was it not so, Doctor, that some of the compromises that were made was for some of the Committee members to surrender their view that a minor ought to be able to give informed consent to the question of abortion?

A This opinion was expressed.

Q And compromises were made?

A They were.

Q Is it fair to say that to a substantial extent the compromises were made that resulted in the adoption of Section 6 because it was the unanimous opinion of the Committee that the best chances for the pregnant adolescent was to share the experience

and the concern and what ought to be done with the family?

[150] A Correct.

MR. BALLIRO: That is all.

JUDGE ALDRICH: Is there any re-direct?

MR. COLE: I have just a few questions, Your Honor.

* * * * *

RE-DIRECT EXAMINATION BY MR. COLE

Q Dr. Hazard, at one point in your testimony of cross-examination you were asked questions concerning the time which the Committee on Youth and members of the Committee devoted to the production of this document. Do you recall that testimony?

A I do.

Q Would you add the other part of your testimony, that is to say, you were asked a question about how much

time was spent at Committee meetings and I believe you answered something like 50 or 60 hours?

A Correct.

Q Did members of the Committee spend any additional time among themselves, over the telephone or through the mail, developing their views and the wording of the statute?

A I would like to respond to that in this way, that one has to look at the experiences and the observations of these Committee members over the preceding years [151] during the period of great turmoil involving the health and well being of young people.

MR. BALLIRO: I object to that answer and ask that it be stricken.

JUDGE ALDRICH: Mr. Cole?

Q Doctor, could you answer the question first and then we could go back to see if we need to give some additional elucidation.

A Would you restate the question?

Q The question was in addition to the time that the Committee members spent in Committee meetings which you testified was approximately or probably was 50 or 60 hours, do you know approximately how much time the individual members spent themselves either through the mail or on the telephone or in small regional meetings, any conversations or deliberations in which they engaged concerning this Model Act?

A I could in no way give you any time. Again if my response is inappropriate, say so.

Q I will rephrase the question and ask you this. Can you tell us of your own experience how much time you yourself as a member of the Committee on Youth devoted to the Act outside of Committee meetings, and I don't mean exactly, but simply your best judgment over a period of months.

[152] A I couldn't generalize beyond saying a great deal of time or someone asking me how I was able to hold down a job and work on this, too and comments like that. It took an enormous amount of time.

Q It took an enormous amount of time?

A Yes.

Q You were asked some questions about the willingness of adolescents facing various types of medical problems, drug abuse, venereal disease, pregnancy, to be willing to discuss their problems with their parents, and I believe your testimony was at one point that at first contact a fair number or a large number would not be willing to discuss it and that the number became less as counselling on health and care was supplied to the adolescent, but at the end there might be, I believe you used the words substantial number of adolescents who

would nonetheless refuse to consult their parents.

Will you give us a better idea of what you meant by substantial number?

A To avoid any misunderstanding, I have no statistical data to say what this percentage would be. It depends again on what environment you were working in, what particular culture group you are working with, whether you are working in a suburban area, the sophistication of the young person or family. The answer varies for [153] each group. I do think the best chances take place when there is a humanistic environment for this exchange between the young person and the counsellor.

MR. COLE: Thank you, Doctor.

* * * * *

RE-CROSS EXAMINATION BY MR. BALLIRO

Q Would you consider the courtroom a humanistic environment for the discussion of or counselling of a pregnant adolescent with respect to the issue of abortion, Doctor?

A The matter of privacy and confidentiality enters into the very core of the success of the counselling.

Q Let us assume in your answer to that to the extent that it is possible the proceedings are not held in a public courtroom but they are a matter of record with a stenographer, but other than that they are more or less private. Would you consider the courtroom environment a humanistic one?

JUDGE JULIAN: Are you talking about a courtroom or chambers?

MR. BALLIRO: As privately as it could be made, Your Honor.

JUDGE JULIAN: You had referred to courtroom.

MR. BALLIRO: Even chambers.

Q Would you consider that a humanistic environment?

A I can think of many instances in which I would not [154] think it humanistic. I think it might be possible to have the kinds of people there who would create a humanistic environment, particularly if there was an advocate for the young person and if the young person fully understood what was being expected of him and what was being shared.

JUDGE ALDRICH: Would you include in that, Doctor, whether or not the young person had a surrogate, the young person's parents are present in the courtroom opposing the young person's wishes?

THE WITNESS: Well, I am not quite sure of the question you have asked.

JUDGE ALDRICH: Well, the court proceedings that we are assuming in this case to take place are

proceedings that occur only after the parents have refused to give the consent to the minor but nonetheless the parents are present and would state that to the judge that the minor's consent be recognized.

THE WITNESS: It would be my hope that the child would have qualified counsel, for one thing, and secondly, that there be a separate person who would be recognized as the advocate of the child.

MR. BALLIRO: I don't think that answer is responsive respectfully, Your Honor.

JUDGE ALDRICH: Well, it's a good start. [155] Assuming that the child has both a lawyer and a friend, which is a big assumption because I doubt whether the child would have both, from my contact with the best of all possible worlds.

THE WITNESS: In response to your last remarks I would hope that society

would recognize the gravity of the situation to see that such a structure was available.

JUDGE ALDRICH: I think we would all hope that, but let's assume the practicalities of the situation and that the child would have counsel, and I would assume competent counsel, and that the judge is the kind of judge that you see in the three judges before you, how humanistic is that going to be in light of the fact that the parents are unalterably opposed?

THE WITNESS: I have difficulty with the term humanistic.

JUDGE ALDRICH: You used it.

THE WITNESS: I used it because it has real meaning when I use it. I would hope that there would be equal support of the child as of the family.

Q Would you say, Doctor, that the fact the child is well represented but nonetheless is engaged in a heated adversary situation with her parents

that it would then provide a humanistic, what you would consider to be a [156] humanistic environment?

MR. RILEY: Objection.

JUDGE ALDRICH: Do you object to the word "heated"?

MR. RILEY: Yes, Your Honor.

JUDGE ALDRICH: That goes out.

MR. RILEY: The statute says that the parents would only consider her best interests. Therefore, the issue would not be unalterably opposed.

JUDGE ALDRICH: Well, in the first place, the statute doesn't say that, a problem we will deal with later.

In the second place, even if the statute said it, I am sure you are going to contend that every parent will do that.

MR. RILEY: If we are going to assume a benign situation --

JUDGE ALDRICH: The benign situation relates to the court procedure, not that all parents are

benign because that would be a ridiculous assumption.

Q You do understand, Doctor, that we are speaking about an adversary process?

A I do.

Q Where the parents are unalterably opposed to the abortion and where the adolescent has been forced, because she [157] wants an abortion, to bring a complaint in court and ask the Court for assistance in that regard?

A I understand.

Q Do you say under any circumstances that could be a humanistic environment within your meaning of the term humanistic?

A My response is that if things have arrived at this point, I would hope that the Court environment would be as humanistic as possible.

Q You would hope that. You recognize that is not likely that it is going to be very humanistic?

A It is quite apparent from your description of the situation that the child has become a pawn in the situation.

Q And would suffer severe psychological trauma as the result of that kind of a situation?

A She might.

Q In all likelihood, is that correct, Doctor?

A I would hope again that the conduct of affairs at that particular time, if they arrived at that point, could be resolved in a way that might well be not necessarily a psychological crisis for the child.

Q We would all hope that, Doctor, but what in your opinion is the more likely result with respect to psychological impact on the pregnant adolescent?

A I think it would be an unfortunate experience.

[158] MR. BALLIRO: That is all I have, Your Honor.

MR. COLE: May I have re-direct on that issue, Your Honor?

JUDGE ALDRICH: You may.

* * * * *

RE-DIRECT EXAMINATION BY MR. COLE

Q Dr. Hazard, you have been asked to assume a hypothetical situation and you have answered some questions and given some opinions on the basis of those assumptions, and I would like to give you another hypothetical situation and ask you to express an opinion as a consequence of that situation in an adolescent.

Would you assume, therefore, please, that a situation developed in which an adolescent, say, at the age of between 13 and 15 years of age, from a middle income family becomes

pregnant and is diagnosed by a physician as being pregnant, and seeks from him or her an abortion and is told before an abortion can be performed that the consent of her parents must be obtained. She tries to obtain the consent and the parents refuse.

The situation is one in which the parents sincerely believe that an abortion would not be in the best interests of that adolescent. The adolescent does not agree with the parents and leans to the other direction [159] and she goes back to the physician and asks him what to do. The physician informs her that there is relief available from this situation, that she can go to court with him and the proceedings will be private in the lobby of the Superior Court judge of the Commonwealth, at which there will be no other persons present save the stenographer, the

judge, the parents of the child and their counsel if they desire counsel, the physician, the adolescent, a lawyer for her and any witness that may or may not be relevant. The proceedings are secret in the sense that they are impounded, not publicized, and the judge has available to him whatever resources he desires concerning social counselling and psychiatric counselling which as a judge is always open to him and he understands the determination he must make on the case with facts before him: what is in the best interests of this child?

Now, given that hypothetical situation, Doctor, do you have an opinion as to the consequences of such a procedure?

MR. BALLIRO: I object to that question.

JUDGE ALDRICH: He may answer.

Q Do you have an opinion, Doctor?

A I do.

Q What is that opinion?

[160] A It seems to me that when affairs have reached this point where the relationship between the parents and the child have become a courtroom issue that I would have a lot of misgivings about the validity of the relationship between the parents and the child and how capable they are of being valid support for this child in the future.

It seems to me that the lines have been drawn in a way that are not productive as you have stated them. My opinion is that the adolescent child should have certain rights about her life and her body and what happens to it and this should be taken into consideration at that time.

Q Assuming that those issues were taken into consideration, Doctor, that is to say the judge was quite

concerned with the adolescent's rights and what would be in her best interests and how to advance those best interests, do you have an opinion as to what the consequences for that kind of procedure might be for the adolescent?

A The consequences, if the decision was made in favor of the child for quality family relationships are not good. The need for support on the part of the child would be abandoned at this point and the child would be abandoned at this point and her need for support would be great and again hopefully circumstances could be [161] developed whereby those kinds of supports could be developed.

Q Is that the essence of your concern then that this procedure --

JUDGE ALDRICH: I think the leading is uncalled for.

MR. COLE: I beg your pardon, Your Honor.

Q Will you tell us, Doctor, the basis of your concern for the lack of support for the child, why you feel the child would loose support?

A It would be my estimate that a family had been unable to resolve this except to go to a court setting were trying to express other rights on their own rather than take into consideration the whole needs of the child.

Q Is there any other mechanism that you might suggest in such a situation for providing the child and the family with the support it needs to heal the injury it may have suffered as a result of participation in such a procedure?

A I did speak to this point earlier and it was thought not to be relevant, but I think that the needs of the parents are very great under these circumstances in terms of working out their own problems so they can better be of help to their child.

Q Would you expand on that a little bit more, please?

[162] A I think the needs of the parents are to have counselling themselves for understanding their viewpoint, why they have this particular viewpoint, to take this health issue and expose it the way it has been described.

JUDGE FREEDMAN: Is that in the best interests of the parents or in the best interests of the child?

THE WITNESS: Ultimately in the best interests of the child.

MR. COLE: I have no further questions.

MR. RILEY: I have one question.

* * * * *

RE-CROSS EXAMINATION BY MR. RILEY

Q Dr. Hazard --

JUDGE ALDRICH: Do you have just one question or do you have an extensive examination of the witness?

MR. RILEY: I have just one question directed at the point --

JUDGE ALDRICH: I can't hear you.

MR. RILEY: It would just be limited to the recent questions by Mr. Balliro and Mr. Cole.

JUDGE ALDRICH: You said one question.

MR. RILEY: I may have maybe two or three questions.

JUDGE ALDRICH: Very well.

Q Dr. Hazard, assume that a minor girl under the age of 18 [163] is unmarried and desires to have an abortion and her parents refuse to consent to that abortion because they don't feel it is in her best interests, and assume that a determination is made that the child is not capable of giving an informed consent to the abortion, and it is not

in her best interests, who would decide in that situation whether or not the child should have the abortion?

JUDGE ALDRICH: I don't understand that.

JUDGE JULIAN: Who would or should?

JUDGE ALDRICH: Under the statute --

MR. RILEY: If I may clarify?

Q Given that situation, if the parents refused to give consent to the abortion and a judge of the Superior Court refused to give consent to the abortion, is it your testimony that someone else should give consent to the abortion?

A I did not testify to that, no.

Q Would it be good medical practice for a doctor to permit the abortion to be performed?

JUDGE ALDRICH: After the judge had decided that it was not in the child's best interests?

MR. BALLIRO: He would be arrested.

MR. RILEY: In the alternative to a judge deciding that it is not in the child's best interests.

MR. BALLIRO: I object.

[164] JUDGE ALDRICH: Well, if the witness is not confused, I will state it for him. Judge Julian suggests you are confused. I am willing to accept the fact that I am confused. But surely either you are talking about the statute or you are talking about something else.

I understood you to use a hypothetical situation where the child was incapable of consenting, that the parents had decided it was in the child's best interests not to have an abortion and the judge had decided the same way. Then you are asking the witness what is to happen after that? Is that your question?

JUDGE JULIAN: Is that your question?

MR. RILEY: Yes, Your Honor.

MR. BALLIRO: I don't think any answer could possibly be relevant, Your Honor.

JUDGE ALDRICH: Well, I am willing to have it put on the record.

JUDGE FREEDMAN: What doctor positively would ever step out of line and say, "Go ahead and have your abortion" after a judge says, "No", under the statute?

MR. RILEY: May I rephrase the question? The assumption was directed at the child and not at the doctor.

JUDGE ALDRICH: What is that?

[165] MR. RILEY: The assumption was directed at the child and not directed towards any criminal conduct on the part of the doctor.

JUDGE JULIAN: You are confusing me with your question. Stop and think and then ask a question.

Q Doctor, given a situation where a minor child is incapable of giving informed consent for an

abortion and the abortion is not in her best interests --

JUDGE ALDRICH: Counsel, I can not follow you. You said that the child was not capable of giving an informed consent. Then what?

MR. RILEY: Incapable of giving informed consent, and the abortion is not in her best interests, and her parents refuse to consent to the abortion.

Q Would it be good medical practice for the physician nevertheless to perform the abortion in light of the wishes of the child?

JUDGE JULIAN: He can't do that. The law would prohibit it.

MR. RILEY: I am just asking if it would be good medical practice.

A I don't think so. No, it would not be.

MR. BALLIRO: Your Honor, I don't think there can be any good medical practice that runs counter to the law.

[166] JUDGE ALDRICH: Even if there wasn't any law, the Court sees only one answer to that question before the witness has a chance to speak. That is why Judge Julian was bothered by the question originally.

We will take the recess.

MR. COLE: Could we excuse the witness?

MR. BALLIRO: I have no objection.

JUDGE FREEDMAN: Have you completed your examination?

MR. BALLIRO: Yes.

MR. COLE: Yes, Your Honor.

JUDGE FREEDMAN: All right. The witness is excused.

(Recess)

* * * * *

[167] (AFTERNOON SESSION)

MR. MEYER: Your Honor, the parties have produced a stipulation which commemorates the requested admissions we agree on. There still remains additional matters as to which the plaintiffs and amici wish to argue.

If I may file the stipulation? It lists all the ones everyone agrees have been admitted and also are withdrawn. I have the original and three copies.

JUDGE ALDRICH: I congratulate you for getting this far.

MR. MEYER: So the record is clear, if Your Honor please, the additional matters not included in the stipulation are still covered by the Court's order, it is our understanding, and are merely subject to further argument.

JUDGE ALDRICH: The burden is on the plaintiffs to uncover them.

MR. HENN: Perhaps this might be a good time to clarify a point. It is my understanding that any matter which has been deemed admitted pursuant to the Court's order of yesterday is conclusively admitted as the rule provides and therefore the plaintiffs are not permitted to contradict with evidence nor could the Court find to the contrary.

[168] JUDGE ALDRICH: That is what the rule says. I might be a little troubled whether the Court could find to the contrary, but we will face that problem when it comes up. It would depend on the sort of thing that it was. Obviously you could not stipulate to our jurisdiction if we didn't have any, and there might be some other matters.

MR. COLE: May we call our next witness, Your Honor?

JUDGE ALDRICH: Yes, Mr. Cole.

MR. COLE: The defendants call Ernest Krug.

* * * * *

ERNEST KRUG, Sworn
Direct Examination by Mr. Cole

Q Would you state your name, please?

A Ernest Krug

Q Where do you live?

A In Boston.

JUDGE FREEDMAN: Would you spell your last name?

THE WITNESS: K-r-u-g.

Q Are you an individual licensed to practice medicine in the Commonwealth of Massachusetts?

A Yes, I am.

Q Where do you currently practice medicine?

[169] A I am a senior resident in ambulatory medicine at the Children's Hospital.

Q Dr. Krug, would you review for the Court your educational background beginning with your college education and extending through your post-graduate education?

A I attended college at Harvard and received a bachelor of arts degree. I then went to the Union Theological Seminary in New York City where I received a master of divinity degree. From there I went to the University of North Carolina at Chapel Hill where I received the doctor of medicine degree.

I then went to the Massachusetts General Hospital where I did my first two years of pediatric training and I am now doing my third year of training at the Children's Hospital.

JUDGE FREEDMAN: You went from saving souls to saving lives?

THE WITNESS: I am interested in a lot of areas related to theology, yes.

Q Directing your attention to your experience first at the Union Theological Seminary, what was your course of study there?

A I concentrated in the area of psychiatry and religion, which was a special program at the Union Theological Seminary, and I took courses in that general area. I [170] took courses in the area of, for example, anxiety, dying and death, death psychology and theology. As part of my work at Union I also took training in clinical pastoral education and during my third year at the seminary I was assistant chaplain at the Memorial Sloan-Kittering Cancer Center and I was on the staff of the East Midtown Protestant Chaplaincy and I served as a chaplain in pediatrics.

Q Dr. Krug, were you ordained as a minister in any denomination?

A I was ordained in the United Presbyterian Church, U.S.A.

Q Directing your attention to your work at Union, and particularly the last year you were there, and therefore your work at the Memorial Sloan-Kittering Hospital, would you describe the course of your activities as chaplain at the Memorial Hospital?

A I spent most of my time on one floor, the pediatric floor of the Memorial Sloan-Kittering, and I was involved mainly in counselling activities with the children and parents, and I was involved in leading a Sunday service there each week.

Q Did you have occasion during your work at the Memorial Hospital to counsel parents of adolescents?

A Yes. There were children of all ages there for various [171] types of cancer.

Q In the course of your counselling activities at the Sloan-Kittering, did you find a relationship between adolescents and

parents to be a significant one in your work?

A Yes.

Q How would you in your capacity there as a chaplain view that relationship? How did you work with it? How did you try to help the patients and their parents deal with their problems?

A Frequently in the case of a dying child there was a good deal of isolation between the child and the parents, and that was true not only of adolescents but younger children as well. The child often felt a need to try to protect the parents from the kind of anxiety they were feeling from the situation, and I saw my role, among other things, to try to deal with this isolation of the child from the family and to try to improve communication between the two parties. I was impressed that where there was a significant degree of

isolation there was that much more anxiety on the part of the child and where communication could be improved between the child and the family one could thereby reduce the anxiety, such as in the process of dying.

Q Dr. Krug, turning your attention to your work at Children's Hospital Medical Center, are you involved in any activities [172] at the hospital in conjunction with Dr. Melvin Levine?

A Yes.

Q Would you describe to the Court the nature of that activity, please?

A Dr. Levine is the program director of the program I am in and so he is the overall supervisor of the kind of activities I am involved in. I do a variety of things this year as do all the ambulatory fellows. I am involved in working in the

neighborhood health center. I work in an educational program. I work in the emergency room.

One of the things that Dr. Levine and I and one other fellow do together is to be involved in conducting ethics rounds which involves presentation of a case and discussion about every other week. This we started for this year about four weeks ago. Ethics rounds has been going on at the Children's Hospital for about eight years.

JUDGE JULIAN: Eight years?

THE WITNESS: About eight years. This is my first involvement with it.

Q I would like to ask you, Dr. Krug, the comments you are making are your own comments, are they not?

A Yes. I did want to make clear to the Court that the opinions I am expressing are my own views and in no way represent the views or opinions of the Children's Hospital.

[173] Q Would you tell the Court in a little more detail about the ethics rounds that you conduct with Dr. Levine at Children's Hospital, and in particular would you give some indication of the nature of the problems that these ethics rounds have considered?

A We try to deal with some of the ethical issues that come up in medical practice, and one of the ways we went about choosing cases for this year's program was to pick out certain kinds of issues we wanted to cover, issues such as truth telling, informed consent, these kinds of very broad and general ethical problems, and then to choose cases which in some way illustrate these problems, and to have the cases presented and then discussed during about an hour's period of time.

One of the ground rules is that no current case is used. The cases are cases which are not currently active at the hospital.

Q Dr. Krug, is there an ethics round scheduled at the Children's Hospital for sometime during the latter part of this month?

A Yes.

Q Would you tell the Court in substance, just summarize the facts which are to be presented?

A The general approach of the ethics rounds in two weeks will be to look at issues of truth telling, and two [174] cases will be presented which present dilemmas in truth telling for the physician, and this will be discussed.

Q Can you tell us if one of those relates to the problem of adolescents and abortions?

A One of them does.

Q Would you describe in some detail the facts as you currently have them for that problem?

A This particular case that is being used is not a real case. It is a manufactured case in which we try to

bring out again the difficulty of truth telling in the case of an adolescent requesting an abortion. In this particular case that has been devised the adolescent comes to her physician wanting to know if she could possibly be pregnant, and the physician determines that she is pregnant, and the physician makes a date for an abortion after discussing it with the patient and making adequate provision for counselling, et cetera.

While the patient is in his office the mother of the patient calls the physician on the telephone. She has been driving down the street and notices that her daughter is going into the doctor's office. The mother has also noticed that the patient has not been feeling well the past few weeks and she wants to know if the physician has reached some kind of diagnosis, so that the parent can

understand the problem and do what [175] is necessary to resolve it, and the physician is then presented with the dilemma in that the patient prior to this call had requested that the parents not know about the pregnancy.

Q Dr. Krug, stepping back for a moment from that individual case, you mentioned before in your testimony the problems of truth telling that physicians face in their relationship with patients.

Could you elaborate on that for the Court? What is this problem of truth telling? Why is it troublesome to physicians in the context of their medical practice?

MR. BALLIRO: I object, Your Honor. I can not see the relevancy.

JUDGE ALDRICH: Let's hear it. You may answer.

A It is certainly important in terms of the physician-patient relationship to have a basic ground

rule of telling the truth to the patient. At the same time I think physicians recognize, and it becomes more or less of a problem depending on the situation, that the truth itself can be used therapeutically or the way in which you tell the truth can be understood as part of the approach to therapy.

There are different ways to tell the truth. [176] One can tell all the truth or some of the truth depending on how one feels it is most appropriate to interact with the patient, what the patient can handle, what is going to produce --

JUDGE ALDRICH: Are you talking about the patient telling the truth to the physician or the physician telling the truth to the patient?

THE WITNESS: The physician telling the truth to the patient.

JUDGE ALDRICH: I misunderstood.

JUDGE FREEDMAN: Well, in the hypothetical case to be presented at the ethics round later this month the ethical dilemma, as I understand it, is not whether the physician should tell the truth to the patient but whether he should tell the truth to the parents of the patient is that correct?

THE WITNESS: Correct.

MR. COLE: Your Honor, I was going to reach that point with another question.

JUDGE FREEDMAN: All right. Would you continue, Doctor?

A So the physicians when presented with a finding in a patient have to make a decision how they are going to relate that finding to the patient, and there are many ways to relate the finding to the patient, how to [177] relate certain findings and whether to relate certain findings. This has come up, I suppose, most in

the public sphere with relation to telling the patient he has cancer.

How do you do it? What do you say? Do you discuss it with the family first? It is not a clear-cut thing.

JUDGE ALDRICH: You do not have that problem with a girl asking if she is pregnant, do you?

THE WITNESS: No.

Q How is the situation in which an adolescent seeks medical care from a physician, how does that situation complicate the truth telling problems which a physician generally faces or may generally face?

A I think it would be fair to say that pediatricians feel a responsibility to inform the parents of findings in their children because parents have a responsibility to their children, and so the pediatrician, particularly in the case of an adolescent where you are dealing with

a person who is not immature in the way that a young child is but is still under the care of parents, and one has to decide how one is going to relate this information. Certainly the dilemma with respect to the patient still applies and the pediatrician in most cases feels an obligation to tell the truth to the patient.

[178] In the case of a child one is dealing with the responsibility to tell the truth to the parent as well as one has to consider how to communicate the findings to the parent so that one is acting in the best interests of the child.

Q In your own practice, Dr. Krug, have you developed a system of analysis or a way of looking at that particular problem of how to decide when to tell or how to tell parents about the medical health care problems of their children? Do you in your own practice have a way of reaching that decision?

MR. BALLIRO: I object.

JUDGE FREEDMAN: You have state twice "in his own practice", and as I understand it he is a resident.

Do you have a practice of your own?

THE WITNESS: No, sir.

Q I mean in the performance of your duties as supervisor of the emergency room at Children's Hospital Medical Center, as a resident who takes care of patients at the hospital, and as an attending physician at the Brookside Family Health Center, have you arrived at a way in which you make that decision when you are faced with the problem?

MR. BALLIRO: I object.

JUDGE ALDRICH: Before we hear the objection of [179] Mr. Balliro, I have not heard whether it is included in his duties to decide whether to inform the parents.

MR. COLE: All right, Your Honor.

Q Dr. Krug, in the performance of your duties is it necessary for you to determine when and how to inform parents about the medical condition of their children?

A Yes.

JUDGE ALDRICH: How often and with respect to what?

THE WITNESS: As I look back, it has not been a problem in the past to me. I personally do not have a whole lot of difficulty or it has not come up in a situation where it has presented a difficulty to me in terms of wanting to withhold information from the parents.

JUDGE ALDRICH: That is the end of the road, isn't it?

MR. COLE: I don't think so, Your Honor. May I inquire further?

JUDGE ALDRICH: Well, with what? I thought we were looking for his personal experience. He has never had any problem.

MR. COLE: I think if we inquire as to the reason why he hasn't, it might be beneficial.

JUDGE ALDRICH: All right.

Q Dr. Krug, would you tell the Court, please, why in your [180] experience you have not had a problem in determining whether to inform parents of the health care problems of their children?

A Well, I suppose part of the answer would be that in the cases where I have been involved it has not been the kind of a situation where it is a difficult one. For example, I have not been involved in dealing with the abortion issue in adolescents, which is certainly a very touchy issue. So that the kinds of things I have had to deal with have not been the types of diagnoses or problems where it has presented a real problem.

JUDGE ALDRICH: Counsel, the Court does not seem to think you have gotten anywhere.

MR. COLE: That answer would suggest the same conclusion to myself, Your Honor. May I try one more question?

JUDGE ALDRICH: Yes.

Q Dr. Krug, in your dealing with these problems in which the issue has not required any other than an obvious answer is there involved in that obviousness a notion of the importance of parental involvement? Is that one reason why the answer has been so obvious?

MR. BALLIRO: I object.

JUDGE ALDRICH: Excluded.

Q In your personal activities and duties at Children's [181] Hospital and other places, Doctor, do you have an opinion of the importance of parental involvement with physicians in decisions affecting the health care delivered to children?

MR. BALLIRO: I object.

JUDGE ALDRICH: He may answer if he has an opinion, and then we will hear why it should be admitted.

A Yes.

Q What is that opinion?

MR. BALLIRO: I object.

JUDGE ALDRICH: Why is he qualified to have an opinion?

MR. COLE: I believe by his training, Your Honor, and particularly the fact that he is involved as a senior resident at the Children's Hospital Medical Center, and is particularly concerned not with the question of medical practice, as the Court understands it, not in the sense of how to do an operation or what is the right answer to a difficult differential diagnosis, but rather how physicians should attempt to structure their interaction with patients and the public.

JUDGE ALDRICH: With all due respect to the witness, he is a very

young doctor. Secondly, he has stated that he has not had any connection with abortions. I think we are a long way off.

[182] MR. COLE: Your Honor, it seems to me that his experience in counselling of adolescents when at Union and his experience and training and thinking about this matter now at Children's Hospital certainly make him a person who can express an opinion on this matter. I would suggest to the Court that senior physicians who are long established in this area are very few. It is not the kind of thing in which Boards are given and people pass tests or examinations. It is a new field and some of the best thinking, I suggest to the Court, is done by young physicians.

If the Court does not wish to hear the witness' views and take them for whatever value the Court judges them to have, then I understand, but I

think that this witness as a representative of the thinking and concern which physicians have about these issues would be a very valuable asset to the Court's understanding of this problem.

JUDGE FREEDMAN: Hasn't he also stated, aside from the abortion issue, that he has not had any problem in which there was any difficulty in trying to reveal the problems of youngsters to their parents?

MR. COLE: He has stated that, Your Honor.

JUDGE FREEDMAN: Where can he help the Court in the problem that we are faced with?

[183] MR. COLE: Well, one of the reasons for this line of questioning is to show that one of the reasons he may not have had any problem --

JUDGE JULIAN: You are trying to lead the witness.

MR. COLE: I think if he were asked if he had an opinion, he would say that he does have an opinion.

JUDGE JULIAN: What is the basis of his opinion?

MR. COLE: May I inquire as to the basis of his opinion?

JUDGE ALDRICH: Yes.

Q Dr. Krug, would you tell the Court the basis of the opinion that you say you have concerning the importance of parental involvement with physicians in making decisions concerning the health care of their children and by basis I mean you own experience and thinking and conversations and judgments you have had with other people.

A I suppose it would be just by virtue of the contacts I have had with sick children as a resident pediatrician having to communicate information about children to their

parents and seeing, you know, the kinds of -- I'm not sure I know how to answer the question.

JUDGE ALDRICH: If you found the child had [184] tonsillitis or a strep throat -- no problem, you would tell the parents?

THE WITNESS: Correct.

JUDGE ALDRICH: What kinds of cases do you have a problem with?

JUDGE FREEDMAN: And what are the ages of the children you have treated?

THE WITNESS: The pediatric age goes from about zero to 18 to 21 depending on the hospital.

Q Would you answer the Court's question concerning the cases in which you might have a problem in telling the parents --

JUDGE JULIAN: Didn't he testify that he never had one?

JUDGE ALDRICH: I have given him another chance to see if he had any.

A I can not think of a situation where that has been a difficulty.

JUDGE ALDRICH: Your previous question is excluded.

MR. COLE: I will try one last thing, Your Honor.

Q In your experience, Dr. Krug, have other physicians in the hospital come to you and asked you for your advice concerning whether they should involve parents in the [185] decision making concerning a child's care?

MR. BALLIRO: I object.

JUDGE JULIAN: We don't even know whether they have yet.

A No, not specifically.

MR. COLE: I have no further questions.

JUDGE ALDRICH: Any cross?

MR. BALLIRO: I have no cross-examination, Your Honor.

JUDGE ALDRICH: Mr. Riley?

MR. RILEY: No questions, Your Honor.

JUDGE ALDRICH: Thank you, Doctor.

JUDGE FREEDMAN: You may step down.

MR. COLE: That is the end of the defendants' testimony.

MR. BALLIRO: I have no rebuttal, Your Honor.

JUDGE ALDRICH: All right, ladies and gentlemen. I suppose the first move chronologically is to dispose of the remaining admissions. Do counsel wish to submit a short memorandum on that?

MR. HENN: We have a memorandum, Your Honor.

MR. BALLIRO: We are prepared to argue this orally.

JUDGE ALDRICH: The Court would be happier to have a memorandum.

[186] MR. BALLIRO: We would be happy to submit a memorandum, Your Honor.

JUDGE ALDRICH: Fine.

MR. BALLIRO: I just wanted the Court to know that we are prepared to argue orally.

JUDGE FREEDMAN: How many demands for admission remain?

MR. BALLIRO: May Miss Schmidt respond, Your Honor?

JUDGE FREEDMAN: Yes.

MISS SCHMIDT: Nineteen on a quick count, Your Honor.

JUDGE ALDRICH: We will take it on memorandum. Mr. Henn has prepared already a memorandum. If Mr. Balliro would like to prepare another one, that is perfectly agreeable, and, of course, Mr. Cole.

MR. COLE: Yes, Your Honor, we would also like to do that.

JUDGE ALDRICH: Since the burden is on the plaintiffs, you may have three days after you receive theirs to make a response.

MR. COLE: Thank you.

MR. HENN: Your Honor, with respect to these admissions --

JUDGE ALDRICH: Service in hand, Mr. Balliro, [187] so three days is meaningful.

MR. BALLIRO: Certainly.

MR. HENN: If your Honor please, with respect to these admissions, I think the 15 that we object to, which we consider of major importance in preventing this Court with making findings that the evidence would otherwise inexorably lead it to --

JUDGE ALDRICH: To interrupt you -- that would be an item we would consider, whether there was prejudice.

MR. HENN: We would think that some oral argument would be appropriate. This could seriously affect the way that the United States Supreme Court would be able to deal with it. I submit that perhaps this court underestimates the extent to which the Attorney General will make

their case out of these admissions rather than anything that has occurred in this courtroom. I do not think that it is as major as any testimony of the witnesses.

We are prepared, therefore, to argue it right now.

JUDGE ALDRICH: The Court is not prepared. We do not even have the documents in front of us. If you think that this is sufficiently serious so the memorandum you have prepared should be enlarged, I suggest that you work with Mr. Balliro.

[188] MR. HENN: Thank you. We prepared it overnight.

JUDGE ALDRICH: We appreciate your diligence and you should not suffer from it. Now, the Court was hoping that, in view of our extensive familiarity with the case and the excellent briefs we have had so far, no oral arguments as to the merits would be needed. So counsel seriously disagree with that?

MR. BALLIRO: Your Honor, I have discussed this with my brethren and they are agreeable to submitting a brief rather than orally argue. It would appear, of course, necessary that we know the Court's rulings with respect to these.

JUDGE ALDRICH: Certainly. So we won't set a schedule for that until this is disposed of.

MR. HENN: On the briefs, Your Honor, all the parties in this courtroom except for the Attorney General's office, supposed that when this Court asked for briefs it meant briefs at the time of trial, briefs on the law. The Attorney General's office chose to interpret that to mean a memorandum on the evidence, so that they are like the appellee where they have an opportunity to respond to everyone else, after having read their briefs on the law, and we do not have theirs. Obviously we have no interest

in arguing orally. We don't know what their arguments on the law will be. We are put in a similar [189] position to that of an appellant on appeal.

I would think it appropriate to have an opportunity to file a reply brief within an appropriate time.

JUDGE ALDRICH: Well, don't cry before you are hurt. I don't know whether they are going to bring up anything new. We will expressly leave open your opportunity to file a further brief.

MR. COLE: Your Honor, may I be heard on whether the Attorney General has inappropriately --

JUDGE ALDRICH: I did not say for a minute that you had done anything inappropriate.

JUDGE FREEDMAN: Just as a matter of curiosity, assuming the Court is in a position to act on these requests for admissions within a reasonable

period of time, how much time thereafter do the parties feel they need to file briefs?

MR. BALLIRO: To some limited extent, Your Honor, my feelings would be dictated by how long it would take us to get a copy of the record. I would say that after receiving a copy of the record. I would say that after receiving a copy of the record three weeks.

JUDGE FREEDMAN: And by record do you mean a transcript of the two days proceedings?

MR. BALLIRO: Yes.

JUDGE ALDRICH: Mr. Duffey will do his best [190] to have it by Monday of next week.

MR. BALLIRO: Three weeks after that, Your Honor.

JUDGE ALDRICH: The time does not start to run until you get our answer.

JUDGE FREEDMAN: Is that agreeable with the defendants and intervenors?

MR. COLE: Agreeable.

MR. RILEY: Agreeable.

JUDGE ALDRICH: How long do you think it will take you to do this, Mr. Balliro?

MR. BALLIRO: We have done it substantively.

JUDGE ALDRICH: You have done so in such a broad brush that you did not persuade the Court.

MR. BALLIRO: I meant we did it last night, not prior to that. I think we can do it in seven days, Your Honor.

MR. COLE: There is one final matter, Your Honor, and that is the status of the material in the record of the previous hearings in this case, and that is one of the items that is listed in our pretrial memo.

JUDGE ALDRICH: You wanted them to specify what they were looking to?

MR. COLE: Yes. It seems to me that a lot of [191] the previous testimony in this case was admitted

under a different theory of law and therefore under a different standard for materiality and relevancy. I am suggesting that it would be time-consuming to go back and try to sort all that out or ask the Court to be involved in that.

I think if we could have a mechanism when it appears that the material is used by one party or another, we could have perhaps a reply brief or something so that materiality and relevancy could be argued in the reply brief.

JUDGE ALDRICH: Judge Julian and I have been talking off the cuff. Are you contending that this statute is unconstitutional insofar as it applies to minors who are incapable of consenting?

MR. BALLIRO: Yes.

JUDGE ALDRICH: You are?

MR. BALLIRO: Yes, as well.

JUDGE JULIAN: You did not so allege in the complaint. The complaint does not make any allegation with respect to anybody who is not a mature minor capable of understanding.

MR. BALLIRO: I would respond by saying that we did not exclude that.

JUDGE JULIAN: You did not include it. You are the plaintiff who makes the allegation.

[192] JUDGE ALDRICH: Would you give us a rough idea what argument you would make with respect to a minor who everybody would agree was not mature enough to consent?

MR. BALLIRO: I am not sure I would, Your Honor, upon considered reflection after listening to all the evidence. I merely do not want to waive that at this point, that's all.

JUDGE ALDRICH: That is a fair enough proposition, but I think that you and your brethren ought to have an

understanding with respect to that so that we will know what ball field we are playing on.

MR. BALLIRO: Yes, Your Honor.

JUDGE JULIAN: Do we have any evidence before us with respect to 11 year olds, 12 year olds, 13 year olds or 14 year olds? As a matter of fact, the lowest age I heard mentioned throughout the entire case has been 15.

MR. BALLIRO: I think in the requested admissions you may find that kind of evidence, Your Honor, that fairly could be relied upon for the purpose of argument. It is in the data.

JUDGE FREEDMAN: How about the statistics in 11 MILLION TEENAGERS?

MR. BALLIRO: You might find something in there as well, Your Honor.

[193] JUDGE ALDRICH: That might be the first question for you and Mr. Henn to have some understanding about.

MR. BALLIRO: I will do everything I can to relieve the Court of having to --

JUDGE ALDRICH: It is not a question of putting the burden on us. We are concerned with having two railroad trains that do not run on the same track -- I am getting my metaphors mixed -- maybe if they were both running on the same track, there would be a collision.

JUDGE JULIAN: Unless they were running in opposite directions.

JUDGE ALDRICH: Surely your brethren are entitled to know the extent of your allegation, and they are horrified that you might be contending that an immature minor is hurt by the statute.

MR. BALLIRO: I am perhaps not as horrified as they are.

JUDGE JULIAN: There were no questions certified to the Supreme Judicial Court with respect to immature minors.

MR. BALLIRO: I understand that. I will take that into consideration very strongly. I would say my tendency is not to include that. I merely did not want to waive it.

[194] JUDGE ALDRICH: We are not asking you to waive it.

MR. BALLIRO: I understand.

JUDGE ALDRICH: You should communicate with your brothers. I am sure they will complain that you contend otherwise.

MR. BALLIRO: I hear you, Your Honor. May I just say one thing more not in response to but by way of comment to the defendants' statement to the effect that we are proceeding under a different theory of law. We are not. They may decide to because of the previous position they have previously taken, but except for the addition of Section 12(f), our position is pretty much the same. I mention that only because I would like

to feel free to rely upon whatever testimony or evidence is in the record previously.

JUDGE FREEDMAN: You have that right.

JUDGE ALDRICH: Mr. Cole is worried that it might not be relevant. If you can show you are hurt, we will listen to you.

MR. COLE: Your Honor, I have two things to say. First, I am a little concerned at Your Honor's use of the words "as applied". I can not remember exactly what you said -- as applied to a group of immature minors or something like that.

[195] It is the defendants' position that this case is a facial attack on the statute as interpreted by the SJC.

JUDGE ALDRICH: By using the words "as applied" I did not mean that as a term of art. We have a quagmire here as to what is a facial attack.

MR. COLE: Quite so, Your Honor.

JUDGE JULIAN: I am not sure that the parties have told us what is being attacked. Is it the entire scope of the statute, including all female children who are capable of conception or are we being called upon to determine the constitutionality of this statute with respect to mature minors only? We have never been told.

MR. COLE: Our view, Your Honor --

JUDGE ALDRICH: That is what Mr. Balliro is going to tell us.

JUDGE JULIAN: I would like to know.

MR. COLE: Well, we have done the best we can, not being the plaintiffs --

JUDGE JULIAN: I am asking what the derendants consider to be the scope --

MR. COLE: We consider a facial attack on this state statute --

JUDGE JULIAN: With respect to whom?

MR. COLE: To every woman that the statute [196] applies to on its face.

JUDGE JULIAN: And that includes the minors who are not capable of conception?

MR. COLE: Absolutely, and we believe that under Broderick v. Oklahoma that that is a terribly important consideration.

JUDGE JULIAN: Do you contend that the statute is not severable so as to apply to mature minors and not to immature minors?

MR. COLE: Your Honor, in our original memorandum on the motion for stay in this court we briefed that issue and we pointed out that the statute has a rather extensive and direct severability clause.

JUDGE JULIAN: I have asked you a specific question on that issue. Do the defendants that you represent take

the view or don't they take the view that the statute is severable as between mature minors and immature minors?

MR. COLE: The answer to Your Honor's question is that we take the view that it can be severed as to those two questions. If I could answer further and explain why I answer in that way? It is not that easy.

The procedural posture of this case is a facial attack which places the plaintiffs, it seems to us, in a situation having to show under cases like [197] Broderick v. Oklahoma that there is substantial overbreadth in this case. We say that that attack can not succeed because it is unarguably valid as to first and third trimester abortions about which no possible argument can be made. It is, we believe, beyond cavil that it is

valid as to the immature minors. So there is at best the residual about whom the plaintiffs might complain.

As Judge Aldrich has pointed out, this raises the question of facial versus as applied.

When I answered your question, what I meant by it is that I do believe it but I think procedurally what would have to be done is that a facial attack would have to be rejected and that an as applied attack, that is to say as applied to a group of minors so defined by the Court, shall we say, mature minors, that the statute would be invalid on constitutional grounds as applied to that class. That in our view is a second question not before this Court now.

JUDGE JULIAN: That is what the plaintiffs have alleged from the very beginning.

MR. COLE: We feel, Your Honor, with all due respect, that it is an as applied attack.

JUDGE JULIAN: What of it?

JUDGE ALDRICH: As applied is a term or word of art and has more meaning than that. As applied would [198] be whether the Superior Court behaved itself in a benign fashion. As directed -- to get away from that word -- as directed to a certain class.

MR. COLE: If the Court takes that view, then we say that the applicable law follows from Broderick v. Oklahoma and the question becomes one of substantial breadth.

JUDGE JULIAN: I don't follow you.

MR. COLE: What I mean by that, Your Honor, is, as I understand cases like Broderick v. Oklahoma --

JUDGE JULIAN: Just don't refer to a case by name. I don't happen to remember the precise contours of that case.

MR. COLE: I am sorry and I will try to explain. What I understand that case to stand for is that in facial attack cases what a court must do is look to see whether the unconstitutional effect of the statute is so substantial that its constitutional effect as it is applied to other fact situations, as it affects other fact situations, as it encompasses other fact situations, whether that so outweighs the valid constitutional results of the statute as to make it unconstitutional.

JUDGE JULIAN: What you are saying is if the Court finds it is not a severable statute --

[199] MR. COLE: When I use the word severable, I generally relate it to the fact whether there is a clause or a sentence or something like that in the statute that can be knocked out and the rest of the statute remain intact. That, I don't think, is

possible to the problem you suggest and that is why I went to the analysis that I did, Your Honor.

JUDGE JULIAN: I am somewhat at a loss as to why so much was made in most of the pleadings confining the case to mature minors.

JUDGE FREEDMAN: That bothers me a little bit. I would like to know what you believe the class is, Mr. Cole, that has been certified to this Court because you mentioned a couple of things in one of your briefs which have been somewhat troublesome to me.

MR. RILEY: Your Honor, may I make a statement?

JUDGE JULIAN: Yes.

MR. RILEY: I believe when the initial stipulation was made concerning the facial attack, that was as a result of notification to the defendants and the intervenors at that time that they were going to call Mary Moe I and III. We made a request for

the disclosure of the identity of Mary Moe I and III and the affidavit of Mary Moe III indicates that she was living away from home, was a minor and had a previous child. We said at [200] that time, "Is this an attack as applied to these individual minors or is this just a facial attack?" Because, we said, if it was an "as applied" attack on minors, we thought it was necessary to identify those individual minors so their testimony could be brought in.

JUDGE FREEDMAN: Let me see if I can help all of you. On page 6 of the original Opinion, I would ask you to read the next to the last paragraph which says, "We find that Mary Moe, Parents Aid Society, Inc. and Gerald Zupnick have standing, as representative party plaintiffs, and Jane Hunerwadel as intervenor. From the standpoint of their being due and adequate class representatives, we

find they have a strong personal interest and are competently and vigorously represented by legal counsel, and we certify this as a valid class action as to all.

"Before leaving the question of standing we note that Parents Aid Society and Dr. Zupnick by hypothesis cannot lawfully, with exceptions too unusual to be concerned with, perform abortions upon minors incapable of consenting. Nonetheless, we hold that they do have standing to attack the statute as applied to all minors, at least insofar as it requires the consent of both parents."

I think that makes the issue very clear.

MR. BALLIRO: I think I should point out to the [201] Court that on Page 5 of our complaint we refer to the standard lists overriding the patient's informed consent.

JUDGE ALDRICH: If they are incapable of consenting, that is not informed consent.

MR. BALLIRO: That is correct, Your Honor.

JUDGE ALDRICH: That doesn't add anything to what Judge Freedman has said.

MR. BALLIRO: No, Your Honor, but that is the way our complaint read.

JUDGE ALDRICH: Is there any other matter?

MR. BALLIRO: No, Your Honor.

JUDGE FREEDMAN: Is everyone clear on the timetable?

JUDGE ALDRICH: We are hearing from Mr. Balliro within a week on the matter of where he claims to be prejudiced as to our ruling admitting all the matters demanded of Dr. Zupnick. Three days after that we are hearing from Mr. Cole as to why he thinks Mr. Balliro is excessive in his request. After we have ruled on that

matter, Mr. Balliro has three weeks to write a brief, assuming by that time he has heard from Mr. Duffey.

Now, Mr. Henn doesn't want Mr. Balliro to have the same three weeks or do you want to have him just have the three weeks?

MR. HENN: The Court is contemplating [202] simultaneous filing of post-trial briefs, I presume, and in light of the evidence which was as we expected our brief is what we thought the Court requested which was a brief on the law and we have presented it.

Mr. Cole has put himself in the position of an appellee on appeal.

JUDGE ALDRICH: You filed a very wide-covering brief. At the same time, I don't think you alerted him, with his intelligence, to anything that he did not expect.

MR. HENN: You are probably right.

JUDGE ALDRICH: So that does not bother me. It will be the same three weeks. Anybody who wants to file a reply brief after that time may so move.

(Evidence closed.)

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[Title omitted in printing.]

Deposition of Carol C. Nadelson

Deposition of CAROL C. NADELSON, taken pursuant to Notice before Barbara Sakurai, Notary Public, at the offices of the Attorney General, One Ashburton Place, Boston, Massachusetts, on Wednesday, August 3, 1977, commencing at 10:00 a.m.

* * * * *

[3] MR. MEYER: For the record, my name is Michael B. Meyer. I represent the defendants in this matter and I believe that all parties are willing to stipulate that all objections except objections as to the form of the question are reserved until trial. I would further state that we are not going to waive the signing and the filing of this deposition, as it

is our hope that we will be able to use this, at least in part, in place of direct and cross examination at trial, if that is possible.

Is everyone willing to agree to those stipulations?

MS. GRACE: All right. Yes.

MS. SCHMIDT: Yes, that is agreeable.

MR. RILEY: Yes.

CAROL C. NADELSON, a witness called by and on behalf of the defendants, having first been duly sworn, deposes and says on her oath as follows:

DIRECT EXAMINATION BY MR. MEYER

[6] Q Is recidivism a problem with unwanted teenage pregnancies?

A Yes.

Q Why is it a problem?

A That is a very complex issue. It is a problem for a [7] number of reasons, partly having to do with the nature of the adolescence and what that development is like and what kinds of issues have to be dealt with. It is partly a problem because of some of the difficulties in obtaining birth control and good counseling, and it is partly a problem because, often, of family and other psychological issues.

Q What would you say were the causes of recidivism in unwanted teenage pregnancies, if you were asked to list the causes of that problem?

A Well, I think one of the important issues is to think about the adolescent period, which is a developmental phase where kids are sort of struggling to separate from families and to become individuals and develop their own identities. In the process of that they often act in a

way which may not be very future oriented and they sometimes don't think of the consequences of acts and often, and certainly during adolescence, a conceptualization of one's self as an adult is extremely difficult, if possible at all, and, again, it varies with adolescents, and with the age that you are talking about -- you are talking about a different person at 14 than at 18, all of whom are adolescents. So that is certainly one problem.

[8] Another problem has to do with family difficulties and instabilities which affect teenagers very markedly. Just for an example, a teenager who is doing pretty well at age 14 and whose parents get divorced, may very well wind up handling this stress by becoming pregnant. Some teenagers do it again for that reason, but any kind of family difficulty could be reflected in that, so can school and

other kinds of difficulties. Peer pressure is an important issue, depending on the peer group of that youngster, and what kinds of pressures they are subjected to in school and in other places.

Then I think the issue of really integrating what they know -- just in terms of the work that has been done we find that some teenagers certainly are not knowledgeable about things like contraception at all; others do have the facts but can't really use them because they don't see them as related to them.

So that one needs a little bit more in programs for counseling adolescents then is generally available for them, and, certainly, our sex education programs are generally totally inadequate with regard to that. Then I think there are a great many mythologies and fantasies and ideas about what one is

doing that are related to why they behave in the way they do.

[9] Q Excuse me for interrupting you. When you say mythologies and fantasies, you mean mythologies and fantasies held by the teenager?

A Yes.

Q Please continue.

A Do you want me to say more about that?

Q Please.

A All right.

Well, certainly the most important one is: It can't happen to me. The next most common one is: It doesn't happen the first time -- and on and on and on; but, you know, that is pretty characteristic of the kind of thing that you see and it really takes most teenagers until they get toward the end of that period -- maybe 18 or 19 -- before they really have a concept of themselves in the world and an

ability to make a plan that takes into account what the ramifications of an action like pregnancy may be.

Q If I could just list a few possible motivations for teenagers becoming pregnant that we have obtained from the literature, I would ask if you could just state if you think that that is a possible motivation or one that has occurred sometime or another.

A All right.

[10] Q Self-punishment, is that a possible one?

A Yes, sure.

Q Replacing some loss?

A Yes.

Q Depression?

A Yes.

Q Deprivation in an earlier stage of childhood?

A Yes.

Q Hostility to parents?

A Yes.

Q Uncertainty of the teenager's own femininity?

A Right.

Q Desire to be like their mother?

A Yes.

Q The ones that I just listed and asked you to agree with, are those possible motivations, the type of motivations that require counseling?

A Yes.

Q In general, what are some of the results of repeated unwanted teenage pregnancies?

A You mean psychological, sociological or whatever?

Q Psychological, if that would be the easiest.

A Well, just to start with something that is easier, I think, you probably are aware of the physical hazards.

[11] Q Would you list them quickly?

A Certainly. There is a higher rate of prematurity and perinatal mortality for the infant, and complications of pregnancy and labor for the mother. So that there is a higher rate in adolescence, which is generally believed to be related to poor prenatal care.

Q Let me interrupt you a second. You are now comparing pregnant minors to pregnant adults?

A Yes.

Q And you are saying that pregnant minors have greater risks of the kind of things you just mentioned?

A Right.

Q It is also true that those risks increase with the number of abortions that the minor has had?

A Those risks? They are not related to abortion; they are related to pregnancy.

Q All right.

You were listing the increased risks that a pregnant minor runs, as contrasted to the risks of any pregnant adult.

A Yes.

Q All right.

As a minor has additional abortions, what physical results can occur?

[12] A Well, as far as I am aware, it is not any different than in an adult, and the evidence is very poor that anything happens, except there is a question that there may be problems with subsequent pregnancies after more than four or five, but that is rarely tenuous data.

Q With subsequent abortions?

A With subsequent pregnancies. In other words, there may be some effects physiologically but that is not only tenuous data but it is not clear what it is based on or, you know, how you can obtain that kind of

data. In other words, you don't know what would have happened to that person in another situation. They may be vulnerable anyway. So I am hesitant to say that we have any good evidence of anything.

Q Is there any evidence that repeated abortions cause a higher incidence of cancer of the cervix?

A I couldn't answer that question. I am not a gynecologist.

Q How could recidivism in unwanted teenage pregnancies be reduced?

A Well, there are a lot of things I think one could do in the best of all possible worlds, but I think that the number one issue, very clearly, in dealing with the entire problem is dealing with education aspects in the first place. I think the most vulnerable people are the [13] ones who most often have the least available to them, in terms of

education. I think counseling resources are terribly critical, and that is also poorly lacking.

A teenager who has a problem really doesn't have any idea of where to go or who to talk to so that we really aren't providing for those kinds of needs. We do know that teenagers often have a hard time talking to their parents about sexual issues, either because their parents are unreceptive or they are embarrassed or frightened or uncomfortable. Sometimes they find it easier to talk to other people, but if they don't have those other people around they find their peer groups to talk to. So those would certainly be major steps.

The other thing I think is critical is really making the information and contraception readily and easily available, without the usual hassels that people have to go through now.

Q With respect to counseling, you stated that in some cases the minor might need counseling. I take it some of the causes or possible motivations for adolescent pregnancy or some of the problems that might be solved by counseling are problems the minors might not even be aware of themselves.

A Yes, that is true.

[14] Q If we could go back just a minute to the impacts of recidivism.

A Yes.

Q You listed some of the physiological and physical impacts. Could you list some of the psychological effects of repeated unwanted teenage pregnancies?

A I think the major thing we see clinically all the time is that once somebody who is a minor has a child the chances of them getting back to school and finishing their education or ever getting a job are

really minimal. The chances are that they are going to repeat and be on welfare, not finish school and, you know, that is one end of the sociologic perspective, the cycle of poverty, that one keeps seeing.

I think from the psychiatric point of view a great many of these teenagers really feel they are inadequate to be mothers. They really can't cope. They get very depressed about it. They often feel helpless about it, about what to do with their lives. They often come into it from a position of not seeing themselves as master of their lives. I mean it is a common problem for women generally, but it certainly is for this group; and, having that happen in a way which was unplanned for and which changes the course of their life in such a [15] significant way, really makes them feel impotent again, and the picture that you see certainly goes along with that.

I think the other very serious issue has to do with child abuse and the real inadequate potential of these girls for really dealing with what it is like to rear children and what some of the difficulties are, because they are children themselves, basically.

Q You are referring to the potential that the teenage mother may be a child abuser?

A Yes.

Q Now, you just said something to the effect that the teenage mother or the prospective teenage mother is, in a way, a child herself. Would you explain why that is true?

A Well, I think she hasn't reached a level of maturation where she can assume adult responsibilities and carry them through, necessarily. I mean that is one factor among the many, but people do things impulsively at that point that they don't do later on, and one expects them to do that

because they are not in a position where they can make future-oriented judgments or assume these responsibilities.

Q Would you agree as a general proposition that counseling [16] can reduce recidivism in unwanted teenage pregnancies?

A Well, we like to think it can and we hope it can. There is some evidence that it can, but there is some very good evidence -- you are probably familiar with the Sarrel study that is in the American Journal of Public Health -- it was quite a while ago, at least 10 years ago, I think -- where they developed a program which included counseling in groups and some educational experience, and, clearly, in that group, it reduced recidivism.

There are some other studies that seem to go in the same direction, although usually not as dramatically.

Q Would you say that, in general, family counseling might decrease recidivism of unwanted teenage pregnancies?

A Might, if you could get the family.

Q With respect to counseling in general, how would it be done?

A Well, it would depend on the institution that you are talking about and the resources of a particular community, so that it would vary enormously from one community to another. It also has a lot of implications in terms of cultural determinants. For example, if somebody lives in an inner city, one might have very few resources because people are so overtaxed. If you live in a suburb, [17] it might be very easy to have one-to-one counseling. So that there are lots of different models that one has to devise for the community one is operating in.

Q Would you agree that as a general proposition counseling for teenagers who have had or are having an unwanted pregnancy should be nondirective, as opposed to directive?

A How do you define those?

Q When I use the word "directive" I mean counseling which is aimed at producing some result or some opinion in the person being counseled, a result or opinion that is previously held by the person who is doing the counseling.

A Any good counselor should not impose an opinion.

Q If you, as a doctor and a psychiatrist, are dealing with a teenager who has an unwanted pregnancy, how would you go about encouraging counseling and insuring that the counseling, in fact, gets done?

A Well, again, it depends on the situation. If somebody is seeing

me as a private practitioner, I have different resources than if somebody is coming through, say, the Beth Israel or Children's Hospital Clinic. I think that is an important factor.

Frankly, generally speaking, it is almost easier to deal with people who come via the private sector [18] because they are often more motivated and their families usually are more motivated to do something, and that varies a great deal when you are dealing with clinic populations when somebody comes in with a pregnancy which they define as unwanted. It is critical to try to recommend that they have counseling -- and we have in our clinic, and I think most social workers who are available and there in that clinic who will see youngsters and try to help them and work out what they want to do.

Q You would recommend or refer the teenagers directly to that social worker within the Beth Israel?

A The system is a complex one, and if I am in a position, I would, but there are various avenues that would be a general approach.

Q If this patient can't come to you through your private practice, how would you encourage counseling or how would you insure that counseling was done?

A It would vary. Sometimes I would do it; sometimes I would refer them to somebody who I think is a competent counselor, you know, having prepared them for what the situation was.

Q Now whether you were doing the counseling yourself or whether you referred the patient out, I take it you [19] would encourage counseling as a general rule, is that correct?

A Yes.

Q Would you tell me what the term "family pathology" means in psychiatry?

A One could write a book on that one. To be brief, it usually means families where there is some either pathological interaction, i.e., disturbance in interpersonal relationships, or where one member of the family or another is seriously disturbed, and, thus, might affect other people in the family.

Q Could a so-called "family pathology" be one because of unwanted teenage pregnancy?

A Oh, yes.

Q Now, doctor, are you familiar with the term "informed consent"?

A Yes.

Q Could you tell me what you mean when you use that term and what you understand it to mean when it is used by your fellow pediatricians and psychiatrists?

MS. GRACE: Would you mind asking those questions one at a time, please?

MR. MEYER: Certainly.

Q Would you tell me what you mean when you use the term [20] "informed consent"?

A All right.

What I generally mean is that the patient not only knows the nature of the situation, i.e., the illness or whatever they have and has some understanding of what it is, but also knows the implications of what that is and knows what the implications are of the alternative kinds of choices that the individual has to make, and when finally the individual makes the decision about they want to do -- whether it is an abortion or another surgical procedure or a medical one or anything -- they have a sense of what it is they are agreeing to and doing and what those implications are.

Q So is it a fair result of what you have said that for someone to give informed consent to a procedure they have to understand both the risks

and the nature of that procedure and also the risk and the nature of other alternative procedures or the risks and the nature of doing nothing; is that a fair summarization?

A Yes, that is fair.

Q Is the description you have just given me of the term "informed consent" that you mean when you use that term, is that a similar meaning that you believe that is used [21] by other psychiatrists and pediatricians?

A Yes, I would say generally that's sort of the more ideal model and, you know, sometimes we have all kinds of glorious ideas about what people understand and we find out that they don't. We do the best we can.

I don't know if you are familiar with it, but there was a report, I guess about last summer or the summer before, in the New England Journal of Medicine, where they studied a group of patients who were informed about

surgical procedures and they tape-recorded the process of the informing, and they discovered a very high percentage afterwards did not remember anything that they had said on the tape.

Q A high percentage of the people being informed?

A Yes, you know, they said a day later: I never heard -- I don't know what you are talking about, or I don't really understand this; and so that is certainly a common clinical experience. You do the best you can.

A Would you agree that, as a general proposition, as an adolescent progresses and grows older they are more able to give informed consent?

A Generally, yes, I would say that is true.

Q Would you agree, as a general proposition, that for any age minor there are some minors that cannot give informed [22] consent to any medical or surgical procedure?

A That is true of some adults also.

Q It is true of some minors, no matter what the age?

A Sure.

Q Would you agree that, as a general proposition, some minors give informed consent to a relatively simple procedure, but a more complicated one might entail a weighing of risks and alternatives which would make it impossible for them to give informed consent to that other more complicated procedure?

A Yes. Again, the same is true for some adults.

Q Now, based upon your experience dealing with adolescents and based upon your opinion of how serious a first trimester abortion is, would you give me a statement of what percentage of 17-year-olds can give informed consent?

MS. SCHMIDT: I think this was all gone into in the course of the first trial and the Court made a specific finding on the capacity of minors to give an informed consent. I think if you refer back to the trial transcript in the Court's opinion these issues have been, I think, fairly well defined.

MR. MEYER: I think this is going to lead to eventually relevant material and so I am going to press [23] the question. I understand your concern about time and I will move through this very quickly.

Q Could you give me an estimate, your estimate, of the percent of 17-year-olds who could give informed consent to a first trimester abortion?

A I couldn't give you a percent because I would have to know more about what group of adolescents you were referring to.

Q The group in your practice.

A Private or clinic?

Q Private first.

A In private practice most of them would, I would say most of them, 95 percent, at least, could give informed consent. It is somewhat lower in the clinic practice, but not terribly much.

Q If a 10-year-old came to you through your private practice, how likely do you think that 10-year-old would be to be able to give informed consent to a first trimester abortion?

A They usually don't get pregnant.

Yes, but when they did, how likely do you think it would be a 10-year-old would be able to give informed consent to the first trimester abortion?

A Again, 10-year-olds don't get pregnant.

[24] Q Have you ever dealt with a 10-year-old pregnancy?

A Again, we have had a couple -- one or two.

Q And, in your opinion, were they able to give informed consent to an abortion?

A Yes --- Well, informed consent is a different issue for a 10-year-old because you have to deal with it in terms of what a 10-year-old's capacity to understand is, and so it has to be handled in a totally different way. I mean it is not the same issue.

Q Is it your opinion that 10-year-olds could give informed consent to a medical or surgical procedure based upon a different type of understanding than an older adolescent or adult might give it?

A Sure. They would understand it differently, just like they understand tonsilectomy differently than a 14-year-old might.

Q In what way would a 10-year-old have a different understanding of the risks and the alternatives when a 10-year-old was giving informed consent to an abortion?

A Well, a 10-year-old generally doesn't have a terribly great concept of anatomy or physiology or what the nature of a procedure would be. They would see it in terms of do they get cut or get a shot or not, and that would be the way it would be dealt with at the medical [25] level. So that the procedure itself would have to be explained in terms of what happens more concretely. You would not go into a complicated detailed description because it would be confusing and meaningless and upsetting, probably, for a ten-year-old.

Again, people who know how to talk to children have to be involved with this kind of thing. Ten-year-olds are

somewhat different than the 11 or 12-year-olds we sometimes see.

As to the issue of having a baby, a 10-year-old wouldn't have the foggiest idea of what a pregnancy was, really, unless they had a mother or a sister or somebody who was pregnant around them, and that is often the experience, but not always the experience of 10-year-olds. They may, in fact, know what it is --- Well, they generally do, but they would have to know more about what it is like to have a baby, what the process would be like, which would be very hard to explain to a 10-year-old since they have no basis in past experience. One might have to do it in a complicated way like with dolls or something, to make it clear.

Also, in terms of the issue of having a baby, one would have to differentiate what having a living baby to be responsible for would be

like, which, you [26] know, again is not possible for a 10-year-old to understand.

Q Would a 10-year-old have to understand the problems of having a child as one of the alternatives when they were pregnant in order to give informed consent to an abortion?

A I think anybody has to understand that, if they give consent.

Q And I take it your testimony is that it is difficult for a 10-year-old to understand what a pregnancy is and what carrying into term means?

A Yes.

Q Now, just to go back a minute, you said that maybe 95 percent of the people that came to you in private practice that were 17-year-olds would be able to give informed consent. Could you give me a rough equivalent number for 16-year-olds?

MS. SCHMIDT: Object to this whole line of questioning for the reasons I gave before.

Q Could you answer the question, please?

A Probably close to the same percent.

Q Somewhat lower?

A Maybe. It is a guess. There is no data behind it that I am aware of.

[27] Q And could you give me some more numbers for other ages -- 15 and 14?

A Well, I think you would probably go down progressively but slowly. I think that --- I know you are trying to define a level, which is really not possible, because development is a process and you can define a sort of general population, but there are some 25-year-olds that can't do much better than a 10-year-old. So, you know, when you

try to generalize it, it muddies the issue, I think.

I think the cutoff that one might think about in those terms has to do with what the cognitive capacity of the youngster is, and that you'd have to determine by testing them and interviewing them as to what their capacity for understanding was.

My own experience is that most 12-13 and on youngsters really have a pretty good idea of what is happening, and one could say, roughly, that probably puberty has some effect on their understanding of their bodies, but some 10 and 11-year-olds also have a better idea than one might expect.

Q What kind of testing and interviewing would be necessary to ascertain whether this was, in fact, the case?

A Well, I think, again, this depends on the person who is [28] doing it and what their concerns are.

One could certainly test -- and I am not a psychologist so I can't give you the specific tests that I would use in it -- but one can test developmental levels. There are a whole variety of ways that one does that. Tests have been devised for concluding intelligence, intelligence testing, and there are a whole variety of things that are age scaled, but what we are talking about is an issue of cognitive development, which is a very complex area and there are certainly -- Piaget and Kohlberg among others have written about that, that kind of level of testing.

In terms of interviewing, a skilled pediatrician or child psychiatrist could easily do that by sometimes using derivative material and gradually moving to the specific issues.

Q Are you familiar with the Kohlberg theory on the stages of model development?

A Yes.

Q How long would it take someone who was adherent to that type of theory to test a child to determine these things?

A I couldn't answer that.

Q How long would it take a psychologist using standard tests of the type you have described to make this evaluation?

[29] A I couldn't tell you. I am not a psychologist.

Q Would you give the same answers for Piagetian psychologists?

A Yes.

Q Does an abortion have different psychological impacts on a minor than on other surgical procedures, such as a tonsilectomy?

A Well, again, we have to define the level of age of the minor and the way the procedure is explained. A tonsilectomy could certainly be quite the same

experience. It may be even more traumatic to a child who didn't understand what was going to happen or didn't know beforehand what to expect, so that one could use the same level or the same kind of preparation and -- well -- there certainly is no evidence that there is any major traumatic effect. I am not aware of any good studies that compare those two. All I can say is, from clinical experience, that it would depend entirely on how it was explained.

Q Would you think that a minor's decision to have an abortion, a first trimester abortion, was a more difficult and more important decision for that minor than the decision to have, say, a tonsilectomy?

A I think it depends a lot of the age of the minor. Certainly this has been our experience, and I am going [30] through rough kinds of age guidelines, but roughly, around 16

would be the time when you expect most teenagers to be really quite clear on all of the implications of an abortion in the same way that adults tend to think about it. A 13-year-old would have a concept of what she was doing, but the whole issue of babies is a totally different thing for most 13-year-olds, or the idea of having a pregnancy, and, actually, having a baby is just a crazy idea to a 13-year-old. It doesn't have any relevance. An abortion is a procedure to a 13-year-old and most of them don't think terribly much about it and don't seem to have much more happen to them.

Q Let's deal with the class you described.

A All right.

Q First of all, doctor, let's take the 16-year-olds and over.

A Yes.

Q Would you agree, that, for the class, the psychological impact of having a first trimester abortion is greater than the psychological impact of having a tonsilectomy?

A I can't really answer that with any data because they are really not comparable issues.

Q Can you answer that based upon your professional experience and expertise and learning?

[31] A You are dealing with apples and oranges. They are not the same kind of thing. A tonsilectomy is a procedure that is done because you have something wrong. You have infected tonsils. You have been sick. An abortion is something where you are not sick. You have no feelings about being sick. You have, in the end, some vague idea about what might happen if you don't do it, which is a pregnancy. They are not the same.

Also, when you talk about the effects, do you mean the effects the day after, the week after, six months after, two years later? They vary considerably. All we can say is that the evidence is that abortion does not have a psychologically effect. I think in some people a tonsilectomy could and in other people an abortion could.

Q Would you agree with the following statement that "A minor having an abortion involves the first time in life the adolescent faces a decision with permanent lifelong effect where she has to determine a life goal, which may be immutable." Would you agree with that statement?

A That is roughly what I said.

Q And you agree that statement is correct?

A It is out of context.

Q Is it correct that a minor's decision to have an abortion [32] may

be the first time in that minor's life where they have to determine the life goal, which may be immutable?

A Yes.

Q And is it correct that the decision whether or not to have an abortion may have a permanent lifelong effect?

A Yes. It is actually really more than decision to have a pregnancy that we are dealing with.

Q Would you explain that a little bit?

A When somebody is faced with an unwanted pregnancy, to continue that pregnancy will change their life in one way or another, because they will go through the whole process, and the aftermath. To have an abortion will not change their life substantively. It will change their inner psychological sense of themselves, because they have made a decision that they have never had to

make before. I think that is the important difference.

Q Now, that psychological effect about having made a decision that they have never had to make before, would that apply to a tonsilectomy, as well?

A Most people don't make decisions about tonsilectomies. In other words, it is not the same thing.

Q What you are saying is that a tonsilectomy is, basically, a non-controversial procedure which the doctor recommends and people generally go along with?

[33] A Yes.

Q That is the reason for the distinction you are making between a tonsilectomy and an abortion?

A Yes. It is also related to the illness model issue: The fact that a recommendation is made because you have an illness.

Q Is it a fair conclusion from what you have said that you also agree that the decision to have a tonsilectomy is thought of by the medical profession as being non-controversial?

A Right now, no. Nothing is.

Q I would like to list some effects which the literature claims can result from an abortion of an unwanted pregnancy in a minor and ask you if you would agree that these are possible psychological effects.

A All right.

Q Guilt?

A Possibly.

Q Sense of loss?

A Yes.

Q Arresting of the development process?

A An abortion?

Q Yes.

A No, I wouldn't think that would be a terribly likely thing.

[34] It is possible, I suppose, but not likely. Pregnancy is more likely to do that.

Q An effect on the minor's dependence or degree of dependence on their parents?

A Again, a pregnancy is more likely to have that effect.

Q In your practice, Dr. Nadelson, could you give me an estimate of the frequency with which you see pregnant minors and in which parental consultation is contra-indicated?

A Okay. Well, let me start out by saying that if I am talking about my practice, I am not going to talk only about my own practice; I am going to talk about what I have more relation to, which is supervising, because that is a broader group and I myself don't see all those many.

Q Please do.

A There, again, I can't give you a percentage figure because it depends a lot on the population that you are dealing with and where they come from. But, for example, if one is working in a private abortion clinic, one is much more likely to have parental involvement possible than in some of the clinic work that we do. A large number of our population don't want to inform their parents. If they do, it is only one they want to tell. [35] They are afraid of the other. A lot of them, if I informed them that they even had to tell one parent, will just skip out, and it is hard to know what they do at that point. I think that it is often a very difficult thing to do. We try to encourage it, but we are dealing with a very complicated problem. If you are dealing with a clinic that has very few resources, you can't possibly have somebody spend

a whole day tracking down parents, because you just don't have the facilities for that. One hopes that that can be done. We try to encourage the teenager to tell her parents. If she can't tell the parents, we offer to tell the parents and try to intervene in some way so that it is not as uncomfortable for her. We offer to sit with her when she does it, if that will make her feel better. There are any number of ways to go about it. You have to have the resources, however, to be able to do that. It is very time consuming and difficult.

Q Now, you listed as one thing that might occur being that the teenager was either afraid of the parents or did not wish parents to know. Would those be reasons why parental consultation was contra-indicated?

A Well, you are dealing with another complicated problem, which is how do you decide when you go against the wishes of an individual to keep something confidential; and, [36] basically, our feeling is that we, under only the direst circumstances, would violate the confidentiality with a patient. So that one wouldn't tell somebody without consent unless it was an emergency.

Q Now, you make that judgment on medical and psychological grounds, is that correct?

A Yes.

Q Now, would you list why parental consultation might be contra-indicated? What reasons would you give for contra-indication?

MS. SCHMIDT: I object. This was all gone into with Dr. Nadelson in her testimony at trial and a determination was made by the Court on this issue.

MR. MEYER: I would press the question.

Q Dr. Nadelson, would you please list the reasons why parental consultation might be contra-indicated?

A Well, I think there are a whole variety of reasons where that might be a problem. With some youngsters relationships with the parents are very bad. Parents may be vindictive or angry or punitive. They may feel guilty and want to project their guilt onto the teenager and punish her because of that.

It is not infrequent to hear a parent say, "It serves her right." I don't really know who it serves [37] right. But, in anger, lots of things like that happen. One may have parents who are disturbed who are in the middle of their own marital difficulties, who may use the youngster as a pawn.

Another frequent problem is when you have parents who are divorced or separated. In other words, one may say one thing and the other may say the other thing. They may fight over this. This may become an issue that they battle as to their concern, and they may not really understand.

There may also be a moral or other position, which isn't necessarily shared by everybody, which they might impose. Generally, you know, some parents are also emotionally disturbed, psychotic even, alcoholics, drug addicts -- whatever -- and, really, they can't make a decision.

Some parents are incredibly narcissistic and really are only concerned with themselves and not really with the welfare of their child or are able to be objective and to try to work out a solution.

Q Now, all the things that you just listed, I take it those are

possible reasons why parental consultation might be contra-indicated, in your opinion, correct?

A Yes.

[38] Q Could you give me, given those reasons and given the discussion we have just had, your best judgment of what percentage of the time for patients that you see and the people who you instruct see that parental consultation is contra-indicated?

A Okay. Let me differentiate something.

Q All right.

A If a minor feels it is desirous, then the question of violation of confidentiality comes out or the pressure or strong-arm tactics, is she decides no. That is a common occurrence, where the youngster feels that she does not want to tell her parents. It is more in some groups than in others. I can't give you an

exact figure because it depends on the age and the situation, the family situation and all those things.

Q Again, I am looking for your best estimate, and if it is necessary for you to break this down by age, that is fine. I'd like to ask you, first, what is your best estimate, and you may give that in any way you can express it, for those in which the child believes it is contra-indicated?

A Generally, this is just a rough ball park figure, because there is no data behind it, other than my clinical impression, but younger adolescents are more willing to talk [38] to their parents because they tend to see themselves as being without any resources, so the chances are they will go to a parent. A 13 or 14-year-old is more likely to go to a parent or close relative, though they may be scared or upset. Often it is late, but they will somehow let that person know.

A 16 or 17-year-old is much more likely, if they feel there is a problem, to decide to take it elsewhere and to deal with friends or other people who are resources, such as teachers or whoever, and to insist on not telling parents. That certainly is a common finding, again, in a cross-population, but it depends a lot on the family structure. That would be a better differentiation than a percent.

Q Are you able to give any estimate as to percentages, or do you feel it just is impossible?

A I really don't think it makes sense to do that. It would just be a total guess.

Q All right.

Now, going to what you have stated is a smaller group -- those for whom it is objectively contra-indicated in someone else's objective judgment -- could you give me any estimate as to

the size of those groups, and, again, expressed with respect to age, if that is [40] easier?

A Yes. That is, again, not as age related because that is related more to the parents, often, than to the children. That is much harder to say. In the private sector it is different than in the public sector. In the private sector it is less likely to happen where that is an objective finding as, you know, somebody knows the family and knows that this is not a possible situation or it is more likely to happen in the clinic population, and, again, if I look at the people, say, in the Children's Hospital, it would be different from the people that we see at B.I. So to give you a figure doesn't take the whole picture into account. I could, roughly, make an estimate. I don't think it would really make sense to make a guess on

that. It is a small percent, in any event, not the same as the other.

Q Would it be under five percent?

A I couldn't say.

Q Could you give any estimates, not for the number as a whole but that number for the components, that is, for those you see in your private practice, for those you see at Beth Israel or for any other particular sub-class?

A I am not clear on what you want exactly.

[41] Q Again, I am asking for the percentage of pregnant minors who have unwanted pregnancies for whom parental consultation is objectively contra-indicated. Could you give me any estimates, not for that number as a whole but for that number, for the sub-class, that you see in your private practice, the sub-class you see at Beth Israel or for any other sub-class?

A All right.

Just in my private practice it probably runs less than five percent. In the clinic it probably runs maybe close to ten percent, but, again, that is really a guess.

Q Would you agree with the statement that: The only problem parental consent requirements cause is the problem of delay?

A That is a major problem.

Q Would you agree with the statement that was the only problem?

A Not the only problem, no.

Q I'd like to read you a quotation from something you have written and ask you if you still agree with this.

A All right.

Q It is an article dealing with teenage abortions and the paragraph starts: "This problem has been brought into [42] sharper focus by the large numbers of out-patient abortion

facilities which do not have adequate pre-abortion counseling and concern themselves with rapid turnover and large numbers of abortions, rather than quality care."

Do you still agree with the substance of that paragraph?

A Yes.

Q Would you tell me why out-patient abortion facilities that do not have adequate pre-abortion counseling cause problems?

A I think mostly the problem is that it is not clear on what basis the decision gets made and I think that is a critical issue. If you don't have a counselor available, you don't know if somebody forced somebody into it or whether they really have thought about it and made the decision. You don't know what other factors are going on in their life that might be critical, in terms of the decision they are making.

Also, I think you find that all people do, but certainly teenagers, are more vulnerable to making impulsive decisions, so that you would want to make sure that the person has thought about it and has weighed the options and has then made a decision.

[43] Q Would you agree with the statement that: Abortion facilities, both out-patient and in-patient, differ in their adequacy of their pre-abortion counseling?

A Sure.

Q Would you tell me why it would be a problem for an out-patient abortion facility to concern themselves with rapid turnover and large numbers of abortions, rather than with quality care? Why would that be a problem?

A It would be a problem because they then wouldn't have adequate resources for counseling and for any kind of post-abortion followup. I am

talking now about it from the physical point of view, more than the psychological point of view.

Q Would you agree as a general principle that a minor's family physician, if she has one, should be made aware of the fact that the minor was pregnant and has had an abortion?

A Again, that is another complicated confidentiality issue and we don't, as a rule, release any records about anything without consent.

Q Strictly as a matter of medical procedure would it be a good idea, if there were no problems about confidentiality of patients or records, would it be a good idea for the family physician to know strictly for future medical [44] practice that the minor has been pregnant and has had an abortion?

A Yes.

Q And the reason you say that you have some reservations or it is

complicated is that there may be some confidentiality problem with the minor not wishing the family physician to know, is that correct?

A Yes.

* * * * *

[45] Q How do you make sure the teenager who has an unwanted [46] pregnancy actually goes to a counselor and receives counseling?

A You can't make sure. You can do the best you can, but that is all.

Q Could parents help in making sure that the teenager got some type of counseling?

A They could, but they often don't.

Q You said, in answer to a question on a different subject, words to the effect that teenagers don't have much of an idea as to where they should go for counseling, is that correct?

A Yes.

Q Would you agree that, for similar reasons, that teenagers do not have much idea of about where to go for abortions?

A They often have more of an idea about that.

Q How would teenagers obtain ideas about where to go for abortions?

A Usually they would ask their friends.

Q Is that the type of decision as to which, again, parents might be helpful in making a teenager decide where to go for an abortion?

A It is certainly possible.

Q You were discussing teenagers' abilities to understand future implications of present acts, and you said that [47] teenagers often have what you described as poor future orientation, correct?

A Yes.

Q How can a teenager understand the implications of surgical and medical procedures, if they have poor future orientation?

A You are not dealing with pure culture; you are dealing with abortion versus pregnancy. So you are not weighing abortion versus non-abortion as the factor. When you are weighing two different cultural alternatives you have to come up with some kind of decision. The future orientation vis-a-vis the continuing pregnancy is far more difficult than vis-a-vis an abortion because the implications are lifelong and unchangeable, and evidence is that people certainly have more effects either from having a child they don't want and trying to bring it up or giving a child up for adoption.

Q Do you agree that the decision whether or not to have an abortion is a decision which has lifelong effects?

A I am not saying it that way. I am saying the issue is the pregnancy has lifelong effects. Having the abortion has some effect, like any crisis people have in their lives, and people have lots of them. Having a pregnancy and continuing is something that somebody lives with the [48] rest of their life.

Q So you agree that if a teenager has a pregnancy and they decide to carry that pregnancy to term that that decision has lifelong effects?

A Yes.

Q And the decision not to carry that pregnancy to term that that decision has lifelong effects?

A Yes.

Q And the decision not to carry that pregnancy to term, therefore, has the opposite of those lifelong effects, isn't that correct?

A It is not simply therefore, no. I said it has a whole different kind of effect on a person. I am talking about a qualitative issue.

Q But the effects of deciding not to have the child are lifelong effects, are they not?

A Yes.

Of deciding not to have the child?

Q Yes.

A Well, it depends. If you are 16, it is very different than if you are 40.

Q I am talking about minors now.

A It would be hardly an issue because they could have lots of children later on.

Q Would you agree that people who have tonsilectomies would not generally have a reaction of guilt over having had their tonsils removed?

[49] A I would say that is probably true.

Q Do you know of any cases where people who have had tonsilectomies have had a sense of guilt with having them removed?

A I haven't had much experience with tonsilectomies, except my own.

Q Now, the psychological effects that can result from having an abortion, you would agree though psychological effects, like guilt and the sense of loss or effects on development, those would not result from having a tonsilectomy, is that correct?

A Well, you could have a sense of loss from having a tonsilectomy.

Q Would that be common, though?

A I don't know that anybody has studied it, but you certainly do with other surgical procedures, such as a gastrectomy or anything like that. It is losing a body part.

Q Would you agree that a pregnant adolescent is a person that,

because of psychological development and family issues which seems to be etiological in a pregnancy, would produce a high recidivism rate? Would you agree with that?

A Yes.

[50] Q Would you describe what ambivalence means to a psychiatrist?

A It generally means having some uncertainty about what one thinks, feels or wants to do about something, a feeling that may be both ways about a similar issue.

Q Does it mean, roughly, the same thing as uncertainty or indeciveness?

A Not quite, because it has more unconscious implications.

Q Is the decision to have an abortion or not to have an abortion an event which usually -- excuse me -- a decision which usually causes ambivalence?

A Again, it is a decision to have an abortion or to have a pregnancy, and people are ambivalent about that for a lot of reasons and in a lot of directions, but people are ambivalent about a lot of things.

Q When does ambivalence reach what is termed "clinical importance"?

A When somebody can't make a decision because they can't settle it.

Q Would you agree with the following statement: The ambivalence of women who have abortions while still planning to have children in the future is of clinical importance?

A Sure.

[51] Q Now, for women, whether they be minors or adults, who have an abortion and still plan on having children in the future, would you agree that that causes conflict?

A No.

Q You would not?

A It depends.

Let me qualify that.

Q All right.

A It depends on what you mean by "conflict." I think I mean something different than you.

Q Conflict has specific meaning to psychiatrists, is that correct?

A Right.

Q Would you tell me what it means as a term of art?

A The term "conflict" in its unconscious meaning has to do with --- It activates some early or other kind of process and may create symptoms or behaviors or whatever. It is not the same as warfare or disagreement. It is internal.

Q Agreeing that in my question I mean conflict in the same way that you just described, would you agree that the decision of a woman who is still planning on having children in the future to have an abortion in the present, that that decision may cause conflict?

[52] A It may, but not necessarily, though.

Q Could that conflict be manifested in subsequent neurotic tendencies or reactions?

A Could be.

Q Would you agree that adolescents tend to show a special intensity and volatility of feeling and that certain of their emotions are extremely strong and extremely changeable?

A Yes, that is true, but I think it is important to differentiate that one has to be careful about what age adolescent one is talking about.

Q Would you agree with the following statement: Closely allied to his intensity of feeling is the adolescent's need for frequent and immediate gratification?

A I'd make two comments: One is to "his," mostly because the research is on "his" and not "her," so

that the nature of female adolescent processes is less well-known. On the other score, yes.

Q What does "reality testing" mean in psychiatry?

A It means the ability to perceive a situation and realistically assess what its implications are. Usually it is used more related to some psychoses than anything else.

Q Would you agree with the following statement: Reality testing is not as effective in the adolescent as in the [53] adult? An adolescent is particularly likely to be unaware of the probable consequences of his actions and to understand the feelings or behavior of others?

A That is generally more true of adolescents than adults.

Q Would you agree with the following statement: If we examine the failures of reality testing, we find them to be limited to situations

in which the adolescent's relation to a parent or parent substitute is of primary importance?

A That would be hard to answer without knowing the context in which that statement was made.

Q Would you agree with the following statement: There is in adolescence a failure of self-criticism. This is perhaps only a special instance of the failure of reality testing. This quality is best described as an inability to take another person's point of view and to get off and look at oneself. It is one of the factors permitting the adolescents to behave and feel in an impulsive, immoderate and unrealistic way?

A Yes, that is generally true, but not always true.

Q Would you agree with the following statement: The adolescent has an awareness of the world about him different from that of the adult?

A Unawareness of an awareness?

[54] Q Let me start that over again.

The adolescent has an awareness of the world about him different from that of the adult?

A Generally, yes.

Q Would you agree with the following statement: During adolescence the physiological and maturational changes which occur lead to extremely strong emotional reactions and the adolescent lacks experience with her feelings and does not have the emotional control of an adult?

A Again, generally, that is true, but not always, and also for younger adolescents than for older adolescents, as are all those statements.

Q Would you agree that as a general statement the following is correct: What is specific of adolescence is the lessened amount of

adaptive mechanism with which to deal with these problems -- referring to unwanted pregnancies or abortions?

A Could you restate that, please?

Q Certainly.

Would you agree that the following statement is generally correct: What is specific to this age group, referring to adolescence, is the lessened amount of adaptive mechanism with which to deal with these problems -- referring to unwanted pregnancies or abortions?

[55] A There are two different problems there.

Q Would you agree with the first with respect to unwanted pregnancies?

A Yes.

Q Would you agree with the second with respect to the decision?

A It is not as clear.

Q Would you agree with the following statement: When we see an adolescent or young adult we are seeing an individual in painful and extended crisis. In the crisis of pregnancy, the potential for regression or maturation is particularly dramatic?

A That doesn't make sense.

Q Let's break it down.

A All right.

Q Would you agree with this part, first of all: When we see an adolescent or young adult we are seeing an individual in painful and extended crisis?

A All right.

Q You agree with that part?

A Yes.

Q The second part is: In the crisis of pregnancy the potential for regression or maturation is particularly dramatic.

[56] Would you agree with that?

A Yes.

Q In other words, an unwanted pregnancy may present an opportunity for the teenager to mature and it also may ---

A They are not equivalent, though.

Q Let me finish my question.

A All right.

Q Is it, first, possible that an unwanted pregnancy may present a teenager with the opportunity for maturation?

A It may, but is not terribly likely.

Q May the unwanted pregnancy present the teenager with an opportunity for regression?

A More likely.

Q That is more likely?

A Yes.

Q May the decision to carry a pregnancy to term present an opportunity for maturation?

A It might.

Q May the same decision to carry an unwanted pregnancy to term result in a potential for regression?

A Yes.

Q May the decision to abort an unwanted pregnancy result in an opportunity for maturation?

A Yes.

[57] Q And may the decision to abort an unwanted pregnancy result in the potential for regression?

A Unlikely.

Q That is unlikely?

It may occur, though?

A It is possible, but the data is against that.

Q Would you agree with the following statement: Immediately available abortion may prevent some adolescents from accepting the reality of the pregnancy and working through a decision? The implications of this availability include the psychological

toll of the denial, as well as the pragmatic aspect that it may be less likely that a girl who had difficulty acknowledging her sexuality and has denied pregnancy will be able to accept the responsibility of contraceptive use to prevent future pregnancies?

A Yes.

Q You agree with that statement?

A Yes. I think, though, you have to define what "immediately available abortion" means because it comes from the context of abortion without counseling.

Q And when you use the term "immediately available abortion" what does it mean to you?

A It means somebody walking in and saying, "I want an abortion," and having one right then and there, without having [58] to talk to anybody about it, sort of like: Give me an aspirin.

Q In other words, any medical procedure which involved the administering of an abortion to anyone for any reason would fall into this category of immediately available abortion, correct?

A Let me broaden that because it relates to what we talked about earlier; namely, any procedure of any kind that is entered into without some understanding between the two people of what it is all about is less likely to have consequences and it certainly is likely to have consequences if it involves a decision of any kind and the person attempts to short circuit the decision-making process by making a decision, any decision, as long as it is a decision.

Q So that the medical administering of an abortion to anyone for any reason without proper counseling falls within this category that you describe of immediate available abortion, is that correct?

A No.

Q Would you explain why not?

A All right.

Because immediately available doesn't refer to -- I mean everybody doesn't need counseling. Some people [59] can just sit down and go over what their decision is and some people have done it with somebody else -- they don't need a special counselor. Teenagers are more likely to, because the chances are they haven't had a chance to talk to somebody else about it in some sort of objective way. They don't have those resources available, generally. But, abortion -- You know, what we are really talking about is the just-off-the-street kind of phenomenon, and that one has to have some intervening discussion about something.

Q The off-the-street phenomenon that you describe, that is included

within the phrase "immediately available abortion," is it not?

A Yes.

Q Would you agree that a period of intense anxiety and ambivalence is often experienced in a 24-hour period of time prior to the abortion?

A Yes.

Q Would you agree with the following statement describing ambivalence: Ambivalence is universal. It is related to the conflict between the positive aspects of conception and pregnancy versus the frustration and sadness about making a choice to terminate a pregnancy. Since ambivalence occurs as part of the developmental process [60] of adolescence it is especially prominent in this age group and it is more difficult to assess its particular significance.

Would you agree with that statement?

A Yes.

Q Would you agree with the following statement: For the adolescent's failure of resolution of the unwanted pregnancy crisis can potentially arrest development of progress. The message of pregnancy must be avoided and taken seriously, if repetition is to be avoided. It is important to remember that the pregnant adolescent is a child potentially bearing a child?

A There is a mistype in there.

Q All right. I'm sorry. Let me read it again.

For the adolescent failure of resolution of the unwanted pregnancy crisis can potentially arrest development progress. The message of pregnancy must be understood and taken seriously if repetition is to be avoided. it is important to remember that the pregnant adolescent is a child potentially bearing a child.

A Yes.

Q All right.

Now, could you explain why a failure of resolution of the unwanted pregnancy crisis, why could that [61] occur or how could that occur?

A That could occur if somebody is particularly likely -- if somebody doesn't take the fact of its occurrence as a message, which it usually is -- not always -- it sometimes is an accident, but when a teenager becomes pregnant it is often her saying something about a problem she is having or the family is having or something like that. So that if you short circuit it by doing something, either carrying the pregnancy to term or having an abortion, without understanding what it was about, you are in the same boat you were before, only with more complexities.

Q Would counseling make it less likely that a failure of resolution of the unwanted pregnancy crisis would occur?

A It should, yes.

Q Now, you said that an unwanted pregnancy often carries a message but sometimes is just a result of an accident. Could you describe to me the relative frequencies with which you feel unwanted pregnancies, first, carry a message or, second, are merely the result of an accident?

A I think, from the accident point of view, you really have to look at the failure rate of contraception as one factor. I don't think I have to go into the list of that. You know every contraceptive has its failure rate [62] and each time one has sexual intercourse one runs the same kind of risk, so eventually one is likely to hit the right numbers. That is one factor.

The other factor is that adolescents are less likely to use contraceptives in the first place and so that we have to take those two into account. Again, it is hard to estimate, to give you actual figures, and I can only say that, from my clinical experience, I would probably give a rough 25 percent estimate of accident, at least from the people we see, where there is not much evidence that there is too much else going on. That is, you know, really rough and very general.

The other group of people where, in fact, there are problems of one kind or another and they may be major or minor; it just really is very variable.

Q Would you describe what an "anniversary reaction" is?

A That is a response of some kind. It can be a behavior or symptom or a feeling that occurs on the

anniversary of an important event.

Q Do some minors who have abortions have anniversary reactions?

A That is rare.

Q It occurs?

A It does. It has not been something that is widely reported. [63] It is much more common with pregnancy.

Q Can abortion for a minor result in a withdrawal from social relationships?

A It can.

Q Can abortion for a minor result in preoccupation with feelings of ugliness?

A I suppose so. I don't think it is as likely, again, as the pregnancy to produce that.

Q Can abortion on a minor result in increased dependency on parents?

A Pregnancy is more likely to do that.

Q But the abortion also could do it?

A It could, but it is not one of the big problems.

Q Can abortion on a minor result in radical changes in relationship patterns?

A Yes.

Q Can an abortion on a minor result in a suicide attempt by that minor?

A I am not aware of any reported cases. It probably happens rarely.

Q Can abortion on a minor result in a successful suicide attempt?

A Anything could.

Q Do you know of any examples of that happening?

[64] A No.

Well, we have not had an adolescent suicide related to an abortion.

Q You are saying that you, in your practice, and you, at Beth Israel, have not?

A Not that I am aware of.

Q Are you aware that both suicide attempts and successful suicide have resulted from abortions and that this has been reported in medical literature.

A It has been, but one has to look at where the reports come from and one of the defects in most of the work that reports that is that nobody had any kind of psychological history of the person before, so that it is really hard to say what that was all about.

Q What you are saying, I take it, doctor, is that a minor who has an abortion and then either attempts to commit suicide or does, in fact, commit suicide, that it is difficult to know whether there was a causal connection or not between the two, right?

A I am saying it is unlikely that there is a causal connection.

Q But the causal connection could exist, is that correct?

A Could.

Q What does the term "developmental course" mean in adolescent [65] psychology?

A What you generally mean by that statement is that there is a sort of process that one assumes psychologically occurs and it follows a pattern, and that is what it usually means.

Q Would you agree that abortions can cause adolescents to be thrown off their previous developmental courses in ways which carry ominous implications for their prospects of achieving a consolidated adult integration and regained self-esteem as a woman?

A No.

Q Is that possible?

A I suppose so but I think that would be highly unlikely. It is more likely that a pregnancy would do that.

Q But, again, an abortion might cause that, is that correct?

A It is conceivable.

Q Would you agree that an overwhelming percentage of pregnant adolescents who have had unwanted pregnancies experience moderate to severe emotional distress during the period of pregnancy?

A Could you repeat that question?

Q Certainly.

Would you agree that, looking at the class of adolescents who are experiencing unwanted pregnancies, [66] that an overwhelming percentage report experiencing moderate to severe emotional distress during the period of pregnancy?

A Not necessarily. It is really quite variable. The distress is often after.

Q Would that depend on the definition of moderate to severe?

A Partly it would depend on that, yes.

Q Would you find emotional stress a common occurrence in adolescents who are experiencing an unwanted pregnancy?

A Yes.

Q What would the term "maturational" mean to psychologists or psychiatrists?

A It essentially means moving off the course of the developmental process.

Q Would you agree with the following statement referring to the class of adolescent girls who had unwanted pregnancies: The central emotional issue revolved primarily around their deception of their families and the burden of secrecy?

A That is an important problem.

Q Why is that an important problem?

A A great many adolescents who are pregnant are terrified about what will happen to them. They are also ashamed, [67] often, and embarrassed and guilty and so they feel that they can't communicate.

It is also not uncommon for a family when an adolescent is pregnant to be totally unwilling to communicate about it from the other end.

Q Now, if that secrecy is maintained, I take it that it is likely that the emotional burden of that deception would continue, is that correct?

A Yes.

Q If the parents or the people standing in the place of the parents were informed, could they then reduce that emotional burden?

A What I was getting at is often they are informed and refuse to

talk about it, you know, so just being informed is not enough. They have to be really willing to enter into it, and they may not be able to do it.

Q Would it be a good idea to attempt to reduce the emotional burden of secrecy by attempting to consult with parents?

A Yes.

Q Now, when we were earlier discussing, doctor, the problem of when parental consultation was contra-indicated in the eyes of a minor, as opposed to when it was contra-indicated by some objective standard, I would ask if you would agree with the following statement on that subject: [68] Fantasies about the minor's parents' feelings may be exaggerated?

Would you say that was correct?

A Yes.

Q Would you agree that adolescents who are feeling

particularly guilty may expect severe retaliation from parents?

A Yes.

Q Would you agree that fears of physical violence or beating are often unfounded fears?

A Not often, but they may be.

Q Would you agree with the following statement concerning adolescents who have unwanted pregnancies: Much of the tension and anxiety for the girl is related to having to tell her parents about the pregnancy?

A Yes.

Q Would you agree that the adolescent who makes her decision in collaboration with her parents is usually the best prepared?

A That is probably true.

Q Would you agree that pre-abortion counseling is a crucial aspect of the abortion procedure?

A Yes.

Q Would you agree that it is not infrequent for an adolescent to be pushed by family or friends to make a decision when [69] she is uncertain?

A Yes, that is true.

Q Would you agree that the counselor must help her to explore the nature of the pressures so that she may make her own decision?

A Yes.

Q Do you agree those pressures by family or friends could either be to have an abortion or to continue the pregnancy?

A Yes.

Q Would you agree with the following statement: Work with the family is important in order (1) to avoid repetition of the unwanted pregnancy, which is most likely a distress signal for the adolescent, and (2) to work out problems reflected by the mutual acknowledgement of the adolescent's sexuality?

A Yes, I think, obviously, it is optimal, but we are not necessarily dealing with optimal situations.

Q Well, that statement is correct as a general matter, is it not?

A Yes.

Q Would you agree with the following statement: The adolescent who is involved in other critical development issues may be desirous of an abortion because her family wants [70] it or vice versa?

A Yes.

Q Would you agree with the following statement: The Supreme Court decision permitting abortion in the first trimester of pregnancy has resulted in a shift from pre-abortion psychiatric counseling to quick turnover at the expense of quality care?

A Could you repeat that?

Q Certainly.

The Supreme Court decision permitting abortion in the first trimester of pregnancy has resulted in a shift from pre-abortion psychiatric counseling to quick turnover at the expense of quality care.

A I think that happened for a period of time after the decision and that seems to be not as much the case any more. Things have settled down.

Q Would you agree with the following statement: Adolescent girls, a high risk population, should experience non-judgmental counseling in order to (1) work through their feeling about pregnancies so that they can reach the best decision for themselves, and (2) cope with stress, guilt and ambivalence they feel, and (3) understand the psychological reasons for their non-use of contraceptives and, thus, avoid future unwanted pregnancies, and (4) [71] improve family relationships, and (5) understand the procedure itself?

A Yes.

Q Do you agree with the following statement: The role of any physician beyond making or confirming the diagnosis should be to explore the patient's feelings and discuss the available alternatives. The patient and her parents should then consider further what decision they want to take, ideally, involving the male partner and his parents?

A That sounds very nice. I haven't seen that happen very often.

Q Would you agree with that statement as being generally correct?

A Yes, it would be nice, yes.

Q Would you agree that, specifically, the physician should explore the patient's feelings and discuss the available alternatives?

A Yes.

Q Do you think that should be done by the physician and not by someone else?

A Well, again, it depends on the situation. Some physicians are better prepared to do that than others, but they are the ones who usually are on the spot when the diagnosis is made and so they can't ignore it.

[72] Q Is the physician the best person, assuming the physician is competent, to do this sort of thing? Is he the best person to do it?

A I don't think so, necessarily.

Q Would you agree with the following statement: Significant people in the adolescent's family must be included in some way in the counseling. Skilled counseling can help the family grow and change?

A Then we are dealing with the problem of the must. It would be nice if one could, yes. If one can do it, yes, they should.

Q If the "must" were changed to a "should" in that quotation, would you agree with it?

A I'd be a little happier with that.

Q Would you agree that dealing with the decision of a pregnant adolescent who has an unwanted pregnancy, dealing with that decision whether or not to carry the pregnancy to term, that decision involves the delicate balancing of risks often requiring the most expert collaborative effort of physicians, psychiatrists and social workers?

A That is a little extreme, I think.

Q Would you agree that it requires expert collaborative effort of trained professionals?

[73] A Well, I think some adolescents can make a decision by themselves or can ally themselves with family members and make a decision. In the decision-making process she doesn't always have a professional involved.

Q Would you agree that for some adolescents with unwanted pregnancies making the decision whether or not to carry the pregnancy to term requires a delicate balancing of risks often requiring the most expert collaborative effort of psychiatrists and social workers?

A I'd go along with "some".

Q Would you agree with the following statement: Emotional counseling is an essential part of care for the woman who elects to terminate her pregnancy?

A Well, again, I don't know whether they mean adolescents or not. I think counseling also is a term we have used a lot, but counseling can be one session and it can be 10 or 20, so it is hard to know. I don't think everybody needs to see somebody over a prolonged period of time.

Q Would you agree with the following statement: Emotional

counseling is an essential part of care for the adolescent who elects to terminate her pregnancy?

A I think that is more likely to be true.

Q That is, at least, true most of the time, is that correct?

A Yes.

[74] Q Would you agree with the following statement: Appropriate psychological intervention during pregnancy and in the post-abortion period may provide the impetus for maturation to the next developmental stage and more responsible behavior?

A Yes.

Q Do you agree with the following statement: The request for abortion or the abortion itself may represent an opportunity for simple psychotherapeutic intervention which may be of vital importance to the woman's subsequent mental health?

A Yes.

Q Would you agree that it is often younger adolescents who delay the decision whether or not to have an abortion or whether or not to carry the pregnancy to term?

A Well, to backtrack, what tends to happen is the delay the acknowledgement of the pregnancy and then they continue to delay and, generally speaking, younger ones do more of that than the older.

Q By the way, we have been discussing abortions and I have been using the term to mean first trimester abortions. I assume you have been meaning the same thing, is that correct?

A Yes.

[75] Q Is it a fair statement that second and third trimester abortions entail greater medical and psychological effects than first trimester abortions in general?

A Let's discount third trimester. Second trimester abortions do have greater medical risks and, interestingly enough, despite the feeling that they should have greater psychological risk, the evidence doesn't bear that out.

Q Why do you exclude third trimester procedures?

A Well, in the first place, they are illegal and nobody does them. Nobody does third trimester abortions around here, at least in any hospital or clinic that I know of.

Q Are you familiar with the testimony at the first trial about the operational procedures followed by Parents Aid Society and counseling and administering abortions?

A I was not at that session of the trial.

Q Are you familiar by any other means of knowledge about the operation of the Parents Aid Society in the counseling and administering abortions?

A Only generally. I don't know the details specifically.

MR. MEYER: Off the record.

(Discussion off the record.)

Q I asked you questions earlier about recidivism. Do you know what the recidivism rate is for teenagers who have one abortion to have another abortion?

[76] A The figures on that are really not very good.

Q Do you have a best estimate?

A They range, depending on whose study you read and what area of the country and which clinic, and it is really not good because the followup is very difficult.

Q Do you have an estimate of what you think the real number is as to recidivism for abortions in teenagers?

A Well, let me put it in terms of for repeated pregnancy, because that is more available and clearer,

and their estimates range between 20 and 95 percent. It roughly is somewhere around 25 percent in our clinic.

Q So the range of 20 to 95 percent represents the range of estimates are made by people who study it and you would agree that the number is somewhere in that range, correct?

A Right.

Q And 25 percent is the number that you see in your clinic?

A That is roughly what we seem to be seeing.

Q Were you talking here about repeat abortions?

A I am talking about pregnancies.

Q We are talking about repeated unwanted or repeated ---

A Repeated unwanted pregnancies.

Q The 25 percent was for Beth Israel?

A Yes.

[77] Q Do you have any idea, leaving aside the patients you see in your practice and Beth Israel, what your best estimate would be for the number nationally or the number in the state? Would you have any estimate, independent of that number?

A My guess would be that if you took all of the studies and put them together it would come out to be about in that range.

Q Again, 25 percent?

A Roughly. There really are probably better data available than I have at my fingertips.

Q I asked you a question earlier about directive and non-directive counseling and you gave an answer which said that, generally, counselors should not attempt to impose their views on the people they are counseling, as a general matter. Could you explain why that is correct?

A Well, I think that the issue involved in counseling, sort of the premise on which it is based is you have an objective outside person who doesn't have an axe to grind or a direct involvement in the situation, who can help clarify the issues and understand what the options are and help somebody work that out, without being emotionally invested in one decision or another.

Q What does that mean, or how would that -- what would be [78] an example of that?

A An example would be a parent, for example, who did or didn't want a pregnancy to continue. It would be hard for them to be very objective, if they had a bias about it.

Q It means a person who wants one outcome or the other?

A Yes, and somebody who is trained, even if they have an opinion, and most people have an opinion about

it, and certainly it is very hard when you see a pregnant 13-year-old to not form an opinion on about what you think, but a trained counselor, presumably, does not let that opinion interfere and can be objective.

Q And, presumably, also does not let that opinion show to the person being counseled, is that correct?

A Right. Right.

Q Would you agree that most minors, whether or not they have unwanted pregnancies, need counseling in general?

A No.

Q You wouldn't agree with that?

A No.

Q Would you agree that most minors who have unwanted pregnancies need counseling?

A Yes.

Q Would you agree that all minors that have unwanted pregnancies need counseling?

[79] A Again, it depends on your definition of "counseling." I think all of them need one session where somebody can assess the situation. Some people would call that counseling. Other people would not call it counseling, unless they saw someone one, two or three times.

Q But you would agree that all, at least, need that one session that you are describing?

A Yes.

Q Would you agree that the mere fact that a pregnant adolescent with an unwanted pregnancy that appears to show understanding of what is going on, does not, necessarily, mean that they do not need counseling?

A Yes, I think that is true.

Again, that would be with the qualification of what you mean by "counseling." That fact that they become pregnant in the first place often means something and you need to

assess, even in that interview, whether or not it was because it was an accident or not or why they were or weren't using contraceptives.

Q Do you think it is good medical practice for a doctor to perform a surgical procedure on a patient he has never seen before?

A No.

Q Do you think it is good medical practice for a doctor to [80] accept a patient's signature on an informed consent form if he has neither discussed that form with the patient nor witnessed the signature?

A I think that is a complicated issue, partly because it depends on the procedure and it depends on what the nature of the contact is. I mean if somebody ---

Well, I think what I am getting at is there is an issue of the contract and it depends on what you are doing. If you are operating in a clinic, say

in a group practice of some kind or in a clinic, the physician may be in the employ of the clinic and then not the responsible party, because the clinic is -- that person is the responsible party, technically; but what I am getting at is the relationship may be with the clinic and not with the physician. The physician is operating as a technician, basically, but the real ongoing relationship may be with that clinic, which I have no feeling about, but that seems to be the way things go. So that qualification is in there. You can do an appendectomy that way and you can give pills that way and you are performing a service on not somebody who you necessarily have an ongoing relationship with.

Q In your opinion should a physician establish a physician-patient relationship before either diagnosing or participating [81] in any medical or surgical procedure?

A That is my personal view.
That is not, necessarily, widely held.

Q I take it that the situation you are describing where the physician is merely a technician and it is the clinic that has established the relationship with the patient, that is the situation which you personally do not think is optimal?

A Right.

Q Why is the physician-patient relationship important?

A Well, there are a lot of issues that involve both people, but, as a physician, I don't like to view myself as a technician. That is not why I am in it. It is because I really want to be involved with the person that I am seeing.

I also don't feel comfortable doing something ---

Well, frequently, in fact, I am asked to sign prescriptions. I won't sign a prescription unless I either

know the person who supervised the person or have some knowledge of what is going on. I don't personally like to do that, from my point of view or from the physician's point of view. From the patient's point of view I think every person is different and has their own way of doing things and I think it is very dehumanizing to [82] be in the situation where you are just sort of acted upon and you are not involved as a person.

Q What effect would the presence or the absence of a physician-patient relationship have upon the provision of medical care?

A I think it really depends a lot on the bias of both parties. It depends on the model in which you grew up.

I mean I, personally, would not feel comfortable not having a personal relationship with a physician, not really knowing who they were. I just

wouldn't do that. A lot of people who grow up in a different kind of model really feel quite comfortable that way.

Q Does the term "episodic medical treatment" have any meaning to you?

A Yes.

Q What does it mean?

A It means generally people who don't follow through and come in crisis, but don't have ongoing relationships with either a physician or a clinic.

Q What are the medical problems that can result from episodic medical care?

A Well, what it means is that a person comes without a history and so you have no, you often have no idea, or they see you only in crisis and so you have no chance to [83] do any preventive work. A person who comes, you know, can have a serious disease that you might miss, if they have only

episodic care, because you wouldn't know of a past history or anything whatsoever from the point of view of the patient and it really is a very poor thing and, from the point of view of the physician it makes the physician less effective.

Q I take it that it is correct, is it not, that if parents are made aware of the fact that their minor daughter has had an abortion, that that information can be relayed to the family physician?

A Not unless the person involved gives permission.

Q If we ignore the problems of whether the minor patient does or does not give consent for this information to be disseminated, as a purely medical matter would it be a good idea for the family physician to know that?

A Oh, sure.

Q Would it be a good idea for the doctor performing the abortion to

have the most complete medical record in existence on the patient available to him?

A Well, generally, it would be very helpful.

Q You have distinguished in many of your answers to my questions between the permanent effect of carrying pregnancy to term and the permanent effect of having an [84] abortion, is that correct?

A Yes.

Q Would you explain to me why having an abortion has different permanent effects, whatever they may be, than carrying a pregnancy to term may have?

A That is a large issue. Basically, and I think this is very critical, a pregnancy is nine months of living with what has happened and of having it change your life in a major way and of making some kind of decision at the end of it about where

else you are going, and people become, obviously, involved. It is a major physiological shift. It presents people with all kinds of complicated psychological issues. They have to, at the end, decide whether they are going to continue and bring up a child, which is a whole other course of life, or give up the child, which really has major implications, in terms of their feelings about the attachment that they form during the process of pregnancy, et cetera. An abortion is really, by most people, seen as a procedure that brings relief. The general data is that most people feel relieved after an abortion. Some feel a little bit guilty, but you feel guilty about a lot of things you do. The issue is not a major one. People don't often conceptualize a pregnancy that ends in abortion the same way, [85] partly because it is so early most of the

time, but also partly because they haven't lived with it for all that time and they haven't really had to deal with the whole process of change that occurs. So that you will generally not find anything like the same responses.

Q Why is it important how the person conceptualizes a pregnancy?

A Excuse me.

Q You mentioned in your answer to the last question that the length of time a person is pregnant before the abortion takes place, affects how they conceptualize the existence of that pregnancy. What difference does it make?

A If you are pregnant for six weeks, you are not feeling very much other than a few changes in symptomology that may have occurred in other times of your life. Also, you know, if you are nauseated or whatever, you have had that experience

before, but when you start to feel a quickening or start to change in body shape, that is something that you have experienced before, is it is your first pregnancy, and it certainly is a very different kind of experience and means something different because you know what is going on at that point. Before that most people don't pay terribly much attention, particularly [85] if it is unwanted.

Q Now, what I am asking you now is why is it important how someone conceptualizes a pregnancy? What effect does it have that they conceptualize it one way or the other?

A I really am not clear on what you really want.

Q All right.

You mentioned in answer to my question that the timing of the abortion, if it occurs, can have an effect on how they conceptualize a pregnancy. What I am asking you is

what does it matter how a person conceptualizes their pregnancy, or, in other words, what effect does one conceptualization have as opposed to another?

A Well, if somebody is six-weeks pregnant, they, you know, may be aware of it, but they don't necessarily feel, that they are having a child and they are not thinking of it in those terms. If they are 25-weeks pregnant, they certainly do begin to become more aware of it and they are making a very different kind of decision then because there is no way you can deny that or not deal with it or not feel it, because something has in a major way changed in your body.

Q I'd like to ask you a few questions, doctor, about situations in which the parents want one decision to be made [87] and the minor wants the other decision to be made. Is it

true, first of all, that in most cases of parental disagreement with their minor's initial decision that it is the parents who want the abortion and the children, the child, who wants to carry the pregnancy to term?

A No, it is really quite variable.

Q Is that true for most pregnancies under the age of 15?

A That is really very hard to say. I think it is quite mixed. It really depends a lot on where the parents are coming from and where the teenager is and, you know, I can't give you any figures on that.

Q What you are saying is that it is really variable and that sometimes it is one way and sometimes it is another. It really depends on which population you are talking about and what the circumstances are of the family and what their values are.

Q All right.

If I am talking about the population of all pregnant 14 and 13-year-olds who have unwanted pregnancies -- that class -- that class of adolescents where the adolescent and the parents disagree -- is it true that in the majority of those cases it is the parents who want the [88] abortion and the child who wants to carry the pregnancy to term?

A Again, it is not really a valid kind of an issue, you know. It depends on whether they live in Boston or Somerville or whether they are Catholic or not Catholic or how financially well situated the family is and how many other children there are and who is sick in the family, you know.

Q You understand I am asking about all of them, whether they live in any particular place?

A You can't generalize because you are dealing with totally different situations.

A I don't think it is a known answer. I don't think anyone can give you that.

Q Do you know the answer to the question or would you know the answer to the question if I were talking about 15, 16 or 17-year-olds?

A No, I think anybody who would give you an answer would be just giving you a guess on that because there are no figures.

Q Is it true that it is extremely common for pregnant teenagers who are 13 and 14-year-olds who have disagreements [89] with their parents, that those disagreements would be in the direction of the teenagers wanting the child and the parents wanting the abortion?

A Again, you know, they might, and it depends also on how much they have really thought through what they really are saying. I mean some teenagers say they want a child

because they want a doll, and that is really what a baby amounts to, and if one has some counseling one can clarify what they are really talking about.

Q Now, would you agree as a general statement that the teenager with an unwanted pregnancy is carrying some kind of psychological weight or burden in making the decision whether to terminate the pregnancy or continue?

A Yes.

Q Would you also agree that in the majority of cases consultation with the parents can lighten or ease that burden?

A Well, again, I can't say the majority. It would ideally be that way, but sometimes it makes it worse.

Q Do you know either way whether that is true of the majority of cases or whether it is less than 50 percent?

A I would say, obviously, probably more often it would be a good

idea and it would make it easier, but that is, again, not always true and it depends on which population [90] you are dealing with.

* * *

[Title omitted in printing]

Deposition of Carol C. Nadelson

Continued deposition of CAROL C. NADELSON, taken pursuant to Notice before Barbara Sakurai, Notary Public, at the offices of the Attorney General, One Ashburton Place, Boston, Massachusetts, on Friday, August 5, 1977, commencing at 9 a. m.

SECOND DAY

* * * * *

[3] MR. MEYER: For the record, this is the continued deposition of Plaintiffs' witness, Dr. Carol Nadelson. My name is Michael B. Meyer. With me is Larry Gotlieb.

Also present are Brian Riley, counsel for defendant intervenors; the

witness, Dr. Nadelson, counsel for the plaintiffs, Joan Schmidt and her associate, Rickey Klieman.

CAROL C. NADELSON, a witness called by and on behalf of the defendants, having previously been sworn deposes and further says on her oath as follows:

DIRECT EXAMINATION BY MR. MEYER, CONT.

Q Dr. Nadelson, I'd like to start out today by going back to one thing that you discussed on Wednesday. You indicated on Wednesday that informed consent for a 10-year-old might involve a lower degree of understanding than informed consent for an older adolescent or an adult. Do you remember that general exchange?

A. Yes.

Could you explain why an informed consent for a 10-year-old might involve a lower degree of understanding than informed consent for an older adolescent or for an adult?

[4] A All right.

Basically, it has to do with the cognitive and emotional capacity of a 10-year-old versus 13-year-old or a 15-year-old, and I think it is a complex problem because you are dealing with a process which I think most of you lawyers like to define more specifically than it is definable. Basically, however, a 10-year-old has a different capacity for integrating information.

Q And that is what you refer to when you say "cognitive capacity"?

A Yes.

Q In other words, what you are saying is that because a 10-year-old has a lesser ability to integrate

information or has a lesser cognitive capacity that, therefore, the level of understanding required for informed consent is lesser for a person of younger age?

A Well, it is not exactly that. Let me see if I can try to explain the concept.

Q Please do.

A What you are dealing with is a person who tends to see things more concretely in terms of what their capacity for understanding is; therefore, an issue that would be clear to you would not be clear in the same terms to a 10-year-old, and what they would focus on would be [5] different because they would be concerned about something that is different than what you would be concerned about.

Q Is it, therefore, true that if you were informing a 10-year-old in an attempt to explain a particular

proceudre to the 10-year-old, that you would discuss different subjects and discuss those subjects in a different manner than if you were discussing the same procedure with an older adolescent or with an adult?

A Yes.

Q And would you discuss these different subjects at a lower level of complexity?

A Well, again, it is sort of a value judgment whether you consider it lower or different. It is not -- for example -- age is not sometimes the only factor. I mean there are a lot of adults who think concretely, too, and what you need to do is have some sense of the way that individual sees something before you can proceed to explain what you would like.

Q Now, the different cognitive capacities that people have at different ages, does that imply a different type of understanding or a different degree of understanding?

A It would certainly be a different type and a different degree and issues would be looked at from a different perspective.

[6] Q When you are dealing with, say, a 10-year-old or a 12-year-old and you feel that there is a different degree of understanding of a lower degree of understanding in that 10 or 12-year-old, would you, as a doctor, require a parallel informed consent by that child's parents?

A Well, again, that is a complicated issue. You would certainly want that to be the case. Sometimes the parents don't understand it much better. One would, hopefully, not involve a child without some more responsible person. However, that is not always possible.

* * * * *

[10] Q Let me read you one quote, doctor, and ask you if you agree with the general tenor of this quotation: "In an [11] attempt to obtain accurate data on recidivism it became clear that previous pregnancies are often not reported retrospectively, especially if another hospital was used for prenatal or surgical care or if an illegal abortion was performed. Attempts to continue to follow patients as Sarrell had done were not successful because 50 percent of adolescent abortion patients do not maintain contact with the clinic."

Do you agree with the general substance of that quotation?

A Yes.

Q Do you agree with the following quotation: "It is certainly axiomatic that an adolescent is best off in a family receiving the support and guidance of concerned and devoted parents"?

A Yes. That is the best of all possible worlds.

Q Let me ask you if you agree with this quotation: "It would be, indeed, preferable if teenagers confided in their parents and obtained their support and help under circumstances of mutual trust and openness"?

A Yes.

MS. SCHMIDT: I object to this line of questioning. This was extensively gone into at the first trial and every expert agreed that parental support was certainly [12] invaluable and the desired results.

Q On one statement we had, Dr. Nadelson, you said that teenagers would probably consult with their friends concerning the decision of where to go to obtain an abortion. Do you remember that line, generally?

A Yes.

Q Do you think that peer groups provide an appropriate source of information for the decision of where to go for an abortion?

A That is variable. It really depends on what subculture you are dealing with and what age group you are dealing with. Certainly, if you are thinking of an adolescent who is older, who is 17 or 18, their peer group may know a hell of a lot more about this than their parents or anybody else.

Q Do you think it makes a difference where a pregnant teenager with an unwanted pregnancy goes for an abortion?

A Where?

Q Yes.

A Sure.

Q In other words, different hospitals and different clinics differ and vary in their abilities to both counsel and perform medically correct procedures, is that correct?

A I think that is less true now than it probably was two [13] or three years ago and I think when we talk about medically correct that I am taking that in the larger sense of medically, in other words, not technical performance but the entire ambiance.

Q And given that reservation about the meaning of the words medically correct in that question, you would agree with that statement?

A Yes.

Q Would you agree with the following statement in the literature, doctor: More recent studies fail to show significant differences in obstetric complications or outcomes for adolescents when more comprehensive obstetric care was provided?

A I am not an obstetrician. I can't answer that.

MS. SCHMIDT: I would object to the form of that question. More recent studies than what?

Q Doctor, when you made statements to the general effect that better prenatal care would reduce the amount of obstetric complications that were encountered by the adolescent that was pregnant -- do you remember that general statement?

A Yes.

Q Would you agree that the medical literature fails to disclose any difference or any significant difference in [14] the rate of obstetric complications when the level of obstetric care was improved?

A I'm not familiar with obstetrics. I couldn't answer that.

Q Also, doctor, you were discussing the general subject of the fact that the majority of cases in which a teenager had an unwanted pregnancy, that in those cases this

was a signal that something was wrong and that in only a minority of the cases could this be described as an accident. Do you remember that general subject matter?

A Yes.

Q Would you agree with the following quotation from the literature: "For many adolescents, particularly those 16 years of age or older, pregnancy is not associated with serious social or psychological pathology"?

A I wouldn't agree with that.

Q Would you agree with the following statement: Failure to involve parents in the abortion crisis only serves to further dissolve the integrity of the home and to promote permissiveness and promiscuity?

A No.

Q Would you agree with the first part of that statement, and let me read the first part to you: The failure to involve parents in the

abortion crisis only serves to further dissolve the integrity of the home?

[15] A Well, that is presupposing that it is integral, and I think that is a supposition I couldn't make.

Q If we were dealing in a situation where the home had some integrity to begin with, would that first statement be true?

A Well, then you would cut out the major portion of those in the situation, and you would be dealing with another group of people, the minority group, so that would hold, if that was the group that you were dealing with.

Q So that statement would be true for the group of families which was not completely dissolved or completely disintegrated to begin with?

A Yes.

Q Would the involvement of parents possibly serve to improve a family situation that was already dissolves and disintegrated?

A It could.

Q Do you think all teenagers who are experiencing an unwanted pregnancy have the capacity to make a good choice about where to go for an abortion?

A They don't all have the appropriate information that would enable them to make that choice.

Q If they all had the appropriate information, would they then all have the capacity to make that decision?

[16] A I couldn't answer that question.

Q What criteria do you believe should be used by either a teenager or by her parents who was making the decision in choosing a place to go for an abortion?

A Well, I think, again, it depends on the resources that are available to one. If one lived in the Boston area, it would be different than if one lived in another place, but if one was accurately investigating the situation I would, you know, look differently than probably other people would, because of my background being different, but I would, roughly, look at the quality of the medical care in the narrow sense of medical, as well as the counseling resources of that particular place and what would be available. I would also look at what kind of emergency facilities were available before I would make a choice.

Q So you would investigate at least three things, that is, the level of medical care, narrowly defined; the amount of counseling and the availability of emergency facilities?

A Yes. Obviously, there would be other things. I would be less concerned about costs and things like that, but I don't think it would be a general truth.

* * * * *

CROSS EXAMINATION BY MR. RILEY

[17] Q Dr. Nadelson, at Beth Israel are there counseling procedures or do you counsel other types of medical procedures?

A Yes, except that the procedure is a little bit less formal or organized for most procedures. An attempt is usually made, but it is not within the same structure as it would be with regard to --- Generally the OBGYN Department does more of it than most of the other medical departments.

Q You were talking about an organized counseling procedure?

A Yes.

Q Could you describe that more, please?

A Well, for example, what we do with teenagers is spend more time with them discussing what it is they are doing, you know, in terms of this specific issue, that is, with an unwanted pregnancy. We do have a formal procedure where they do see somebody who they can talk to about it, in terms of their decision-making. That is also true for [18] people requesting sterilizations or procedures where there are emotional issues or where decision-making is somewhat important, more critical.

In other situations, for example somebody who needs surgery for cancer, they would be counseled and the physician seeing them, in talking about a procedure, would ask someone else to see them, if they felt that

they may be making a destructive or detrimental decision, and try to make sure that they were clear on what decision they were making.

Q Now, is this confined to adolescent counseling, that which you just discussed?

A The adolescent counseling part really has to do with unwanted pregnancies. In other words, we don't do an abortion on an adolescent who hasn't at least talked to somebody in that area who felt comfortable with the fact that they had thought it out and they knew what their options were. That would apply for adults and adolescents with a great many procedures.

We see a lot of young people, for example, in their early twenties, who request sterilization. Most of the gynecologists would prefer to have them see somebody before they would do the procedure because they don't feel

comfortable doing a permanent procedure on [19] somebody who they feel might change their mind.

Q If a minor sought a sterilization procedure, would that minor be counseled?

A Yes.

Q I gather that you are saying that where there are emotional implications to a procedure, medical procedure, there is counseling?

A Emotion or serious medical ones. I am thinking again of a person with cancer who decides not to have surgery. Most of the medical people would ask somebody to come and talk to them to make sure they were aware of what the implications of the decision would be.

Q During the course of counseling is there any discussion of the personal history of the minor?

A Usually of anybody.

Q And is the psychological history of that minor's upbringing important?

A Yes.

Q And is that discussed?

A One would want to know for anybody, anyone who was counseling, an adult or a child, you would want to know something about where they came from, what their family was like, what problems they had with their family or with their background, whether they had serious illnesses of [20] one kind or another, including psychological or medical. It is an assessment that one sort of routinely does psychologically. It is kind of taking a history, just as one would take a medical history.

Q Is that information obtained solely from the child?

A Usually not. Usually parents or guardians provide some information, and this, again, depends on the age of

the person. That also would be true of adults. The person making that assessment has to use their clinical judgment about what information is important, so that you might be seeing an adult and you might want to check out certain aspects of a history with a spouse or a friend or a sibling or a parent, and you might request permission to see that person.

Q Is the religious or moral or ethical background of a minor important, in terms of counseling?

A Yes. One usually asks questions about how they feel about any kind of procedure. Obviously, with some issues there are more implications than for others and people generally ask a general leading question, which the person can then pursue.

Q What leading question would that be?

A Well, for example, if someone is seeking an abortion and I notice on their record that they are Catholic, or such [21] information is usually available from the hospital record, I would ask them what this decision meant in terms of their religious or ethical position. I would ask it, obviously, not only if they were Catholic, but that would certainly be a flag in terms of my asking them if they talked to anybody at the church about any of the issues. It is amazing the answers you get to those questions.

Q Do you consider the answers to these questions -- the personal history and psychological background and religious and moral factors -- do you consider that important in evaluating the minor child?

A Yes, because it has to do with -- and maybe it is important to differentiate here -- but it is not

only used for the decision-making but for some understanding of what repercussions it might have for the future. In other words, you might expect somebody who has had a background of seeing abortion, say, as immoral, and then makes this decision, which is just a recent study which makes some interesting points about this. But if that person makes a decision I might want to know a little bit more about that because I might expect that they might have some feelings about it later, not that I wouldn't think that their decision was valid. I think they could be making it, but they might feel more guilty than someone who [22] doesn't have that concern. The same would go, say, for sterilization.

Q Well, specifically what type of individual would feel more guilty, perhaps, later on?

A A person who has grown up feeling, say, using again the issue we were talking about, a person who has grown up feeling abortion is immoral or wrong and it is clear that they feel they cannot continue the pregnancy, and then they make the decision. That might be more ambivalent than someone who has not had that position, you know, and has not thought that way. So they might feel a little more uncomfortable. They also may get less support from their family or friends and may need somebody else to talk to who is more neutral about the situation.

Q In the situation where a minor child is not capable of giving an informed consent and refuses to inform their parents, how would the decision be made as to whether or not the child should have an abortion?

A That is a complicated issue because we don't see that, you know, really essentially in the first

place. If somebody usually comes to us, they usually have made a decision or have approached it a certain level, and they don't come to the hospital or clinic unless they [23] have gotten to a certain place. So that it would be fairly rare. I can recall of very few instances where, because somebody was retarded or seriously disturbed or something like that, where the question was raised, you know, or where somebody had a serious medical problem and people wondered if they could even carry through a pregnancy, and that person may not have understood what that was all about. That is a whole different thing and a very small minority of the cases we see.

Q In that small minority who would make that decision?

A What happened, and I can't give you the details of the case because I am not familiar with it, but

we have seen maybe two or three times in ten years that I can recall -- I am not familiar with every case that goes through -- but what happened is say somebody has a serious medical program [sic] and the physician feels that an abortion is indicated because the person might not live through pregnancy. A major party may have cancer or something like that. The person either isn't aware of it or doesn't take it seriously or, for whatever reason, you feel that they are not capable of being informed. You might request a legal intervention, and I am totally unfamiliar with all those steps because that never gets handled at our level. It gets handled by the hospital administratively.

[24] Q Would the ultimate legal intervention be court approval of the procedure?

A As far as I understand, yes, but I haven't been involved in that aspect of it.

Q Would you agree with the statement that adolescents can exhibit maturity on one day and be immature on another day or at another period of time?

A Oh, sure.

Q Does that enter into your evaluation of the maturity of the child?

A Yes.

Q Again, somebody who is somewhat skilled at working with adolescents can automatically take that into account in discussing it and, generally, in a serious issue somebody who knows how to interview an adolescent will be able to get the best level out of them in some way. If you can't on one day, you might, in fact, want to see somebody again the next day or something. We frequently do that.

Q All right.

So, for example, a 17-year-old minor girl could come in and be quite mature and appear quite mature on one day and act very immature on the following day?

A Yes, but, generally speaking, with regard to serious [25] decisions, that immaturity is more at the level of other kinds of interactions. I don't know if I am being clear about it. When somebody is faced with a serious decision, you see, you may get some superficial immature appearing behavior, but if one can cut through that -- usually you can get what they are capable of in one way or another, and that is obviously not always true -- but, say, an adolescent is faced with --

Okay. Let me give you an example of the DES business, because that has been an interesting and problematic area, where consent is a problem. You

might get a 14 or 15-year-old who had a DES exposure in utero where a pelvic exam is really very important and they need to be followed, and a 14-year-old might not have the foggiest idea about this and not want to be involved, and it may take a little bit of time for somebody to explain what the issue really is and why. Interestingly enough, I think in that example very often parents aren't terribly helpful with it because they are so emotionally involved and often so guilty about it that you often do need somebody else to help with the explanation in dealing with the situation.

MR. MEYER: Excuse me. May I just for the record ask you to explain what the DES problem is so that [26] this answer is made clear as to what it refers to?

THE WITNESS: That is the situation where the mother was given diethylstilbestrol during pregnancy to

prevent an abortion and what the literature indicates is there is some risk of vaginal agenesis and carcinoma in the children and so they require some fairly careful followup with repeated pelvic exams at an age that other adolescents might not have them.

MR. MEYERS: Thank you. I apologize for the interruption.

Q We talked earlier about the problem of recidivism on the repeat abortions. How do you know a child or a minor is a repeater?

A How do we know?

Q Yes.

A You mean medically?

Q No.

Medically, how do you know that a child is a repeater?

A All right.

The only way you know is if they tell you, as far as I know. I mean I am not a gynecologist so I couldn't tell you if there are other signs and

symptoms, but usually you can only tell from my perspective by the [27] history you get either from them or their family.

Q Is there any medical society that is concerned exclusively with abortion-related mental practice?

A Medical society?

Q Yes.

A Not as far as I know.

Q Are there any universally accepted or universally approved medical guidelines for abortions on adolescent girls?

A I couldn't really answer the question because that would be more in a gynecological sphere.

Q Are there any, in terms of psychiatric counseling?

A Not any formally agreed upon guidelines. I think most people working in the area would roughly follow a similar procedure, but there is no formal procedural code.

Q Are there accepted guidelines for other types of psychiatric counseling and care?

A Some, you know, areas, like shock treatments or whether somebody is capable or whether somebody can be committed -- those kinds of things -- but not generally in too many other areas. There are ethical guidelines for those kinds of things.

Q There are no guidelines concerning exclusively counseling minor girls who might want an abortion?

A No.

[28] Q Do you feel that the best solution to an unplanned pregnancy is an abortion for a minor girl?

A I think it really depends a great deal on what the individual situation and desires are. Some adolescents, you know, want to have a pregnancy and want to continue it and it may make sense for some.

Q Do you feel that an abortion
is an elective procedure then?

A Elective?

Q Yes.

A Oh, yes.